(1995) 04 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No''s. 7205/91, 4648, 6844, etc. of 1992, 9899, 11367, etc. of 1993, 5119, 6413, etc. of 1994, 518, 1304 of 1995 and W.A. No''s. 162 and 182/91, etc.

Thankaraj APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Constitution of India, 1950 — Article 309
Kerala Revenue Ministerial Subordinate Service Rules, 1985 — Rule 10, 11, 28, 4, 4(1)
Kerala Revenue Service Rules — Rule 7
Kerala State and Subordinate Services Rules, 1958 — Rule 2, 2(1), 2(6), 9

Citation : (1995) 04 KL CK 0001

Hon'ble Judges : P. Shanmugam, J;K. Sreedharan, J

Bench : Division Bench

Advocate : C.S. Rajan, M.P.R. Nair, K.P. Dandapani, K. Sudhakaran, A.K. Avirah and M. Sasindran, for the Appellant; Kurian Joseph, A.A.G. and Lal George, Government Pleader for Respondents 1 to 4, for the Respondent

Judgement

K. Sreedharan, J.—The questions that arise for consideration in these Writ Appeals and Origiinal Petitions relate to the seniority of officers in the various cadres in the Revenue Department. Learned Counsel appearing on either side and the learned Additional Advocate General, who represented the Board of Revenue and the State, submitted that this Court need not deal with the claims of individual Petitioners, Appellants or Respondents in the case and this Court need only lay down the law as to how the seniority of personnel in different categories of posts in "the Revenue Department is to be fixed. It is conceded before us that if such a principle is stated by this Court, the implementation thereof will redress the grievance of all the parties to the proceedings. In the light of this submission, we consider it not necessary to deal with the individual eases of the Petitioners, Appellants or of the Respondents. We proceed to examine the rules applicable to the service and as to how the seniority of personnel belonging to the different categories of posts in the Revenue

Department are to be settled.

2. The personnel in the Revenue Department are governed by four sets of Special Rules. The first one is the Kerala Revenue Ministerial Subordinate Service, consisting of-

(1) Head Clerk/Head Accountant,

(2) Firka Revenue Inspector/Special Revenue Inspector,

(3) Upper Division Clerk/Village Officer, including Special Village Officer,

(3)(a) Additional Village Officer,

(4) Lower Division Clerk/Village Assistant including Special Village Assistant,

(4)(a) Additional Village Assistant.

The second one is the Kerala Revenue Subordinate Service, relating to the cadre of Deputy Tahsildar. The third one is the Kerala Revenue Service, which takes within its ambit the post of Tahsildars. The fourth one is Kerala Civil Service (Executive), in relation to Deputy Collectors (Higher Grade) and Deputy Collectors.

3. The Ministerial Subordinate Service was first constituted by Special Rule issued in G.O. (P) 413/RD, dated 14th May 1975. At that time, the service consists of (a) Head Clerk/Head Accountant, (b) Upper Division Clerks, and (c) Lower Division Clerks. Head Clerks and Head Accountants were the promotion posts of Upper Division Clerks. Upper Division Clerks were the promotion posts from Lower Division Clerks and by transfer from among qualified Upper Division Typists and Stenographers. Appointment to the category of Lower Division Clerks were direct recruitment, transfer from among Copyists and Village Officers and Village Assistants and by appointment of Lower Division Typists declared eligible for appointment as Lower Division Clerks. These three categories were to be selected in the ratio of 9:4:7. The rule was subsequently amended by G.O. (P) 851/80/RD, dated 16th June 1980. The categories of posts, as per the Special Rules were-(a) Head Clerk/Head Accountant, (b) Upper Division Clerk, and (c) Lower Division Clerk. Head Clerks/ Head Accountants are appointed by promotion from Upper Division Clerks. The post of Upper Division Clerk is to be filled up by promotion from Lower Division Clerks and by transfer from among qualified Upper Division Typists and Stenographers. Methods of appointment to the category of Lower Division Clerk were (a) by direct recruitment, (b) by transfer from among Copyists and Village Officers and Village Assistants, and (c) by appointment of Lower Division Typists declared eligible for appointment as Lower Division Clerks. The above rules did not contain a category of Firka Revenue Inspector or Special Revenue Inspector. But by virtue of executive orders issued by the Government, Village Officers and Lower Division Clerks were being posted as Firka Revenue Inspectors or Upper Division Revenue Inspectors. This was recognised in the Special Rules dated 14th May 1975 as per Note 1 to Rule 2.

Note stated that the Upper Division Clerks may be posted as Revenue Inspectors in charge of Firkas or on other duty as Special Revenue Inspectors or as Revenue Supervisors to suit administrative convenience. Likewise Village Officers were being posted as Revenue inspectors. The rule framed in 1985 as per G.O. (P) 601/85/RD, dated 12th June 1985 the said category, namely Firka Revenue Inspector/Special Revenue Inspector, was included as the second category just below the Head Clerk/Head Accountant and above Upper Division Clerk/Village Officer including Special Village Officer. Thus the Firka Revenue Inspectors/ Special Revenue Inspectors constitute a separate category above the Upper Division Clerk/Village Officer, including Special Village Officer.

4. The Kerala Revenue Ministerial Subordinate Service Rules issued as per G.O. (P) 601/85/RD, dated 12th June 1985 specifically provided that the Revenue District shall be the unit of appointment for the personnel in the different categories governed by the rules. Subsequently Government amended the Kerala Revenue Ministerial Subordinate Service by G.O. (P) 123/93/RD, dated 8th March 1993. As per that amendment State was made the Unit of appointment in respect of all categories of posts with effect from the 1st day of November, 1956. It was also provided therein that no person shall suffer reversion on account of the change in the Unit of appointment and such person shall be allowed to continue in the category till his term of regular promotion under the State Unit System arises. The impact of this amendment is the main aspect with which we are concerned in these proceedings.

4A. As per G.O. (P) 601/85/RD, dated 12th June, 1985, Village Officers with qualifications prescribed therein should be appointed by transfer against 35 per cent of the vacancies arising in the post of Firka Revenue Inspector on or after 20th February 1970, and also against 35 per cent of the vacancies arising in the post of Special Revenue Inspector after 31st March 1973 upto and including 9th September 1984. Thus the posts of Firka Revenue Inspectors/Special Revenue Inspectors are to be filled up by appointment from Revenue staff as well as Village staff. One of the grievances highlighted before us is that the 35 per cent vacancies set apart for Village staff to the post of Revenue Inspector and Firka Revenue Inspector have not been given to the Village staff. While preparing the seniority list of members in the cadre of Ministerial Subordinate Service, this defect will have to be rectified and the legitimate promotion due to the Village staff must be given to them. We direct the Revenue Board and the State Government to adhere to this requirement.

5. While preparing a seniority list of the various categories of personnel in the Kerala Revenue Ministerial Subordinate Service, due rank was not assigned to those who were holding the post of Firka Revenue Inspector or Special Revenue Inspector. Since Firka Revenue Inspectors and Special Revenue Inspectors were not in the category of posts governed by the Kerala Revenue Ministerial Subordinate Service, they were not assigned their legitimate rank in the seniority list. Kerala Revenue Subordinate Service, as stated earlier, is in relation to one

category of post only, namely Deputy Tahsildars. Appointment of Deputy Tahsildar, as per that Special Rules, was to be made by recruitment by transfer from among the members of the Kerala Ministerial Subordinate Service employed in the Land Revenue Department and direct recruitment. While laying down the method of appointment and qualifications for recruitment by transfer from among the members of the Kerala Revenue Ministerial Subordinate Service, Rule 7(iii) stated that the personnel must have rendered satisfactory service for a period of not less than six years in a post not lower in rank than the category of a Lower Division Clerk, of which at least two years should have been on duty in the post of Upper Division Clerk. In the light of this provision, a question arose as to whether one who was holding the post of Firka Revenue Inspector and who had not rendered service as Upper Division Clerk is entitled to be appointed as Deputy Tahsildar by transfer. The State and the Board of Revenue took the stand that the Revenue Inspectors are not covered by the Special Rules governing the Kerala Revenue Ministerial Subordinate Service and so are not entitled to be appointed as Deputy Tahsildars. That issue which arose prior to the amendment of 1985 came up for consideration before a Division Bench of this Court in O.P. 2755/1980. Division Bench took the view that Firka Revenue Inspectors were also Upper Division Clerks in the Revenue Department. The Bench stated that since the Special Rule framed on 12th June 1955 has been given retrospective effect from 1st November 1956, and Firka Revenue Inspector/Special Revenue Inspector is specifically mentioned as a category of post, to which the Special Rules apply, the Firka Revenue Inspectors/Special Revenue Inspectors were treated as equivalent to Upper Division Clerks. Upper Division Firka Revenue Inspectors should, therefore, be held to be functioning as Upper Division Clerks in the Revenue Department. In other words, according to the Division Bench, the Upper Division Clerk in the Revenue Department is also known in a different name "Upper Division Firka Revenue Inspector". In this view, the Board of Revenue was directed to give promotion to the Firka Revenue Inspectors treating them as having the qualification prescribed in Rule 7(iii) of the Special Rules for appointment to the post of Deputy Tahsildar. It appears that this direction given by the Division Bench has not been given effect to by the Board in respect of all Firka Revenue Inspectors.

6. The above issue regarding the ranking of Firka Revenue Inspector among the members of Revenue Ministerial Subordinate Service again came up before a Division Bench in W.A. 789/1988. According to the Bench which decided the appeal, ascertainment of the feeder category for filling up the post of Deputy Tahsildars by method of transfer should be as per Rule 4(1) of the Kerala Ministerial Subordinate Service Rules. That rule does not make any distinction between the various categories of posts governed by the Kerala Revenue Ministerial Subordinate Service. So, the Bench took the view that Rule 28(b)(vi) and (vii) of Kerala State and Subordinate Services Rules should govern the determination of seniority. Rule 28(b)(vi) and (vii) are in the following terms:

28(b)(vi) When there are more than one feeder category carrying different scales of pay, they shall be shown in separate lists and persons in a lower scale of pay shall be appointed only after appointing all persons on a higher scale of pay, unless the Special Rules prescribe a ratio or any special order of preference for each feeder category.

(vii) When the posts in the feeder categories are on the same scale of pay and there is no fixed ratio, appointment shall be made in accordance with their seniority in the feeder category, the seniority being determined by the date of the order of first appointment to that particular category, class or grade.

It is conceded before us that from 1st July 1978 Firka Revenue Inspectors were on a higher scale of pay, compared to the Upper Division Clerk/Village Officer. So, as per the above principle, for promotion to the category of Deputy Tahsildar governed by the Kerala Revenue Subordinate Service, precedence must be given to Firka Revenue Inspectors/Special Revenue Inspectors vis-a-vis Upper Division Clerks/Village Officers. In this view, the Bench gave the following directions to the Board of Revenue and the Government to make appointments to the cadre of Deputy Tahsildars:

(1) The feeder category for appointment by transfer to the cadre of Deputy Tahsildars under the Special Rules consists of the following categories:

(1) Head Clerk/Head Accountant;

(2) Firka Revenue Inspector/Special Revenue Inspector;

(3) Upper Division Clerk; and

(4) Lower Division Clerk.

(2) It is the State-wise seniority of qualified candidates in the feeder category of the members of the Kerala Ministerial Subordinate Service employed in the Land Revenue Department that should be taken into account for the purpose of effecting appointment by transfer to the cadre of Deputy Tahsildars.

(3) Seniority for the above purpose shall be determined by applying Rule 28(b)(i)(vi) and (vii) of the K.S. and S.S.R.

The Division Bench further directed the Respondents to review the promotions to the cadre of Deputy Tahsildars following the above said directions. It appears that such an exercise was not taken up by the Board of Revenue.

7. In the meantime, further developments took place in the service. Seniority of personnel who came to the cadre of Deputy Tahsildar governed by the Kerala Revenue Subordinate Service came up for consideration before this Court in many proceedings. As stated earlier, appointment to the post of Deputy Tahsildar governed by the said rule is by recruitment by transfer from among the members of the Kerala Ministerial Subordinate Service employed in the Land Revenue Department and by direct recruitment. The person so appointed as per Rule 9 should, from the date on which he joins duty, be on probation for a total period

of two years on duty within a continuous period of three years. Rule 10 provides that a probationer shall, within the period of probation, pass the District Office Manual Test, the Revenue Test (Travancore) or Revenue Test (Cochin) or Revenue Test (Madras); the Criminal Judicial Test; the Account Test (Lower) or Account Test for Subordinate Officers, Part I (Madras) and Survey Test (Higher). A person who holds a degree in Law is not required to pass Criminal Judicial Test. Pass in Survey Test (Higher) was made compulsory only from 1st January, 1974. The Unit for appointment to the post of Deputy Tahsildar, as per Rule 11, is State.

8. In one set of cases relating to the seniority of Deputy Tahsildars the question that was mooted was as to how the period of probation prescribed in Rule 9 of the Special Rules is to be completed. In Appukuttan Nair v. State of Kerala 1990 (2) KLT 806, one of us (Sreedharan, J.), after analysing the various provisions in the Kerala State and Subordinate Services Rules, took the view that a probationer in the cadre of Deputy Tahsildar should pass the mandatory tests during the period of probation of two years on duty within a continuous period of three years. If he fails in passing the test and acquiring the qualifications, the appointing authority can extend the period of probation by one year. If the probationer fails to acquire the qualifications or to pass the test during the extended period of probation, he will have to be discharged after affording him an opportunity of being heard. But, instead of discharging him, the appointing authority may extend the period of probation for Anr. year on condition that his increment shall be stopped unless he is declared to have satisfactorily completed the probation. Thus, the total period during which an officer can be on probation is four years. Since the Beard of Revenue and the Government prepared a seniority list of Deputy Tahsildars ignoring the above provision and gave exemption from passing the test for many years to 121 persons, the list was quashed. This Court directed:

The Board of Revenue has to revise the seniority list of Deputy Tahsildars on the basis of their passing the mandatory tests within the period of probation or the extended period of probation as per the General Rules. An officer who completed the period of probation satisfactorily should be adjusted to the substantive vacancy. A person who become an approved probationer on a later date on such satisfactory completion of probation must take a rank below the first. Seniority list of Deputy Tahsildars has to be prepared by ranking officers in this manner. On the basis of that seniority alone promotions to the cadre of Tahsildars have to be effected. After revising the seniority list of Deputy Tahsildars in the above manner promotion to the cadre of Tahsildars, taking into account the position as on the date of occurrence of the vacancy has to be effected. The ranking of the Tahsildars must be made with reference to their eligiblity of the officer in the cadre of Deputy Tahsildars for promotion as on the date of occurrence of vacancy. Further promotion to the cadre of Deputy Collectors must be made from the list of Tahsildars prepared in the above manner.

This decision was confirmed by Division Bench in W.A. Nos. 691 and 719 of 1990.

While giving effect to the above direction, the Board of Revenue adopted a curious method. While preparing the list, of officers who could not complete probation within the period of probation from the assigned date of promotion were not included. That issue again came up before this Court in Janardhanan v. State of Kerala 1991 (1) KLT 875. The question examined therein was whether the actual dates of promotion to the category of Deputy Tahsildars are later than the date of notional or assigned date of promotion, should the officer be directed to complete the period of probation counting the period from the date of the notional or assigned date of promotion? It was observed therein:

As per Rule 2(1) of the Kerala State and Subordinate Service Rules, a person can be said to be appointed on service when he discharges for the first time the duties of the post borne on the cadre of that service. A person can be said to be appointed to the post of Deputy Tahsildar when he discharges for the first time the duties attached to that post. Only after he starts to discharge the duties attached to the post can be considered to be on probation. This means that no one can be said to be on probation from a date anterior to the date on which he began to discharge the duties attached to that post.

A member of the Kerala Revenue Ministerial Subordinate Service when gets recruited by transfer to the post of Deputy Tahsildar, then and then alone will he start to discharge the duties attached to that post. Only thereafter can he said to be on probation. If on a subsequent date he is assigned an anterior notional date of promotion to the cadre of Deputy Tahsildar, by no stretch of imagination can he be deemed to have discharged the duties attached to the post of Deputy Tahsildar. Consequently he could not have been on probation in the post of Deputy Tahsildar. If the period of probation is to be reckoned from the notional or assigned date, the result would be that he must be deemed to have been on probation while he was holding a post in the categories mentioned in the Kerala Revenue Ministerial Subordinate Service. This absurdity was highlighted in Janardhanan''s case 1991 (1) KLT 875. This Court thereupon directed the Board of Revenue to prepare a seniority list of Deputy Tahsildars strictly in compliance with the said decision. That decision was not challenged in appeal by the State or the Board of Revenue. Nor was it questioned by any person who was in service. No argument was advanced before us in these proceedings requesting us to take a view different from the one that is stated in Janardhanan''s case 1991 (1) KLT 875. In compliance with the decision in Janardhanan''s case 1991 (1) KLT 875, a list of Deputy Tahsildars was prepared by the Board of Revenue on 21st June 1991, which was published along with proceedings No. L.R. (E) 6-10983/91.

9. In proceedings No. L.R. (E) 6-10983/91, dated 21st June 1991 the Board of Revenue quoted in extenso from, Appukuttan Nair v. State of Kerala 1990 (2) KLT 806 and the impact of Janardhanan''s case 1991 (1) KLT 875. It is stated therein that a revised list of persons, who have satisfactorily completed the period of probation in the cadre of Deputy Tahsildar, is appended to the said proceedings. The Board of Revenue gave necessary directions to the concerned

authorities to make corresponding entries regarding the declaration of probation in the service books of persons mentioned in the list. In the list appended to the said proceedings, column 7 was the date of commencement of the probation of the various officers ranked therein and column 8 gave the date of completion of probation by those officers. So the list published along with the proceedings dated 21st June 1991 was of Deputy Tahsildars, who had satisfactorily completed their period of probation on the various dates mentioned therein. Now the said list has been given a go-by and a fresh seniority list of Deputy Tahsildars is drawn up purporting to be in consequence of the amendment brought to the Kerala Revenue Ministerial Subordinate Service Rules, 1985 by G.O. (P) 123/93/ RD, dated 8th March 1993. Till that amendment, the Unit of appointment for the said service namely, the Ministerial Subordinate Service, was the District. By the amendment, the Unit of appointment has been changed to the State. That was given retrospective effect from 1st November 1956. Consequent on this amendment, the seniority of all personnel governed by the Revenue Ministerial Subordinate Serivce underwent a sea-change. As a result of that, it is the case of the Board of Revenue and the Government that the seniority list of Deputy Tahsildars must also undergo a sea-change.

10. As a result of the amendment brought out by G.O. (P) 123/93/RD, dated 8th March 1993, the seniority of all personnel governed by that service, it is argued, will undergo a sea-change. That change brought out to the basement of the entire Department, it is argued, must have its repercussion on the higher categories namely, Deputy Tahsildars, Tahsildar and Deputy Collector. According to Additional Advocate General, when the foundation is changed, that change must be reflected on the edifice as well. This contention, we are afraid, cannot hold good. Special Rules governing the Kerala Revenue Ministerial Subordinate Service affects the 4 categories of Officers governed by that Rule. They are:

(1) Head Clerk/Head Accountant.

(2) Firka Revenue Inspector/Special Revenue Inspector.

(3) Upper Division Clerk/Village Officer including Special Village Officer.

(3)(a) Additional Village Officer and

(4)Lower Division Clerk/Village Assistant including Special Village Assistant

The amendment to the rule cannot affect any other category outside the said Special Rule. The post of Deputy Tahsildar is in an entirely different service. That service is known as Kerala Revenue Subordinate Service. Unit for appointment was the State. So the change in the seniority of personnel in the Ministerial Subordinate Service, which was brought out with retrospective effect, cannot ipso facto be reflected in the seniority of personnel governed by Kerala Revenue Subordinate Service. The change in the Ministerial Service may affect the subsequent recruitment by transfer to the cadre of Deputy Tahsildars. This we say because persons who have already gone into the cadre of Deputy Tahsildar as per the then existed rules are not to surrender their seniority in favour of Ors. who might have become senior in the categories governed by the Ministerial Subordinate Service Rules. As held by the Supreme Court in T.R. Kapur and Others Vs. State of Haryana and Others, , right to be considered for promotion is a condition of service. Rules defining qualification and suitability for promotion are conditions of service. They can be changed retrospectively as well. But that retrospective amendment is subject to an exception, that benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect. Their Lordships have gone to the extent of saying that there is no power to make rule under the proviso to Article 309 or under any other law which affects or impaires vested rights unless it is specifically provided in the rules. No such specific provision has been made in the rules governing the service of Deputy Tahsildars. Therefore those who have already been promoted before the amendment of the rule and those who got into the cadre of Deputy Tahsildars and whose, probation in that cadre was declared by the Board of Revenue, cannot be compelled to surrender their seniority in that cadre.

11. According to learned Additional Advocate General, the rights of those who have already gone into the cadre of Deputy Tahsildar before the amendment of the Ministerial Subordinate Service Rules dated 8th March 1993 have been sufficiently protected by providing that no person shall suffer reversion on account of the change in the Unit of appointment. It was also provided in the amending Rules that a person who got promotion shall be allowed to continue in the category till his term of regular promotion under the State Unit System arises. This provision can apply only to personnel who belong to the service which comes under that Rule. Since Deputy Tahsildars are not persons governed by the Kerala Revenue Ministerial Subordinate Service Rules, the amendment brought out on 8th March 1993 cannot have any impact On their service conditions.

12. The argument advanced by the learned Additional Advocate General is that prior to the amendment of the Ministerial Subordinate Service Rules on 8th March 1993 certain personnel belonging to that service, on account of the fortuitous circumstances of their being placed in certain District, got promotion into the cadre of Deputy Tahsildar earlier to those who were in the other Districts. When the Unit of appointment for the Ministerial Subordinate Service is changed to the State, the senior should get promoted to the cadre of Deputy Tahsildar. He was denied that opportunity only because the Unit was the District. Now since it is made State-wise, a person who was denied the chance of getting promotion to the cadre of Deputy Tahsildar should be afforded a chance to get promoted to the cadre of Deputy Tahsildar. This right he secured on account of the amendment being given retrospective effect from 1st November 1956. In other words, the submission was that a senior officer should be given a right to be considered for promotion to the cadre of Deputy Tahsildar since he was denied that right on account of the Unit being made District. This argument cannot be countenanced in view of the decision of the Supreme Court in R. Prabha Devi and

Others Vs. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms and Others, . Their Lordships took the view that the contention that a senior has right to be considered for promotion to the higher cadre when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post is wholly unsustainable. Their Lordships observed:

The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule making authority.

* * * * * When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post.

Thus, when the juniors who got promotion to the cadre of Deputy Tahsildar, they were seniors as per the Rules then in force. They were eligible for being promoted to the cadre of Deputy Tahsildars. On account of their eligibility and seniority, they got promotion. As has been held by a Full Bench of this Court in Varghese and Ors. v. State of Kerala and Ors. 1981 KLT 458, promotion to higher cadre should depend on the eligibility as on the date of occurrence of the vacancy. When the vacancy in the cadre of Deputy Tahsildars arose, persons who were eligible got appointment to that cadre depending on their seniority as well. On entering the service governed by Kerala Revenue Subordinate Service, they completed the period of probation. Satisfactory completion of their probation has been declared by the Board of Revenue as is evidenced by their proceedings dated 21st June 1991. Seniority of personnel mentioned in the proceedings dated 21st June 1991 in the cadre of Deputy Tahsildars, can by no stretch of imagination be unsettled by the amendment brought out to the Kerala Revenue Ministerial Subordinate Service.

13. A member of the Kerala Revenue Ministerial Subordinate Service may be getting an advantage on account of the amendment brought out by G.O. (P) 123/93/RD, dated 8th March 1992 by virtue of its retrospective operation. He may be entitled to seniority in a higher cadre belonging to that service with effect from an earlier date. But he cannot be given a higher post in a different cadre in which he had never worked either as officiating or temporary or even ad hoc because no one who claims to get seniority in the cadre of Deputy Tahsildar had ever worked on a temporary basis or officiating basis at any point of time. By the mere amendment brought out by G.O. (P) 123/93/RD. dated 8th March 1993, they cannot put forward any claim for the higher post. This position is settled bv the decision in K. Narayanan and others Vs. State of Karnataka and

others, . Their Lordships observed:

An employee occupying a higher post in different cadre may on regularisation be entitled to claim his seniority from the date he was holding the post but giving a higher post in different cadre in which the employee has never worked, either as officiating or temporary or even ad hoc because the employee became eligible earlier, would be violative of the right of equality.

Personnel, who became seniors in the cadres falling under the Kerala Ministerial Subordinate Service Rules may be enblock placed in the category of Deputy Tahsildars. But they cannot be given any precedence over those who are already in that cadre. The maximum the Government and the Board of Revenue can do to favour the persons belonging to the Ministerial Subordinate Service is only to place the so-called seniors in that cadre enblock as the junior-most Deputy Tahsildars. None of them can have any claim for seniority over those who have already entered that service and got their probation declared. This we say because the seniors in the Ministerial Subordinate Service may be found eligible as per the Rules. But that eligibility to be appointed to the particular post does not mean that they stood automatically appointed to that post with effect from any anterior date. They must complete probation in the cadre of Deputy Tahsildar with effect from the date of their discharging duty attached to that post. Seniority is an incident of service which cannot be eroded or curtailed by a Rule which operates retrospectively. The seniority of persons in the cadre of Deputy Tahsildar, which had crystallized as evidenced by the list published by the Board of Revenue in their proceedings dated 21st June 1991, which list was subsequently brought up-to-date on the basis of the principles stated in Janardhanan''s case 1991 (1) KLT 875 are not to surrender their seniority on the basis of this notional promotions sought to be given on the basis of the retrospective amendment brought out by G.O. (P) 123/93/RD, dated 8th March 1993. In K. Narayanan and others Vs. State of Karnataka and others, Their Lordships stated the law regarding the retrospective operation of a Rule as follows:

Rules operate prosepectively. Retrospectivity is exception. Even where the statutes permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right so as to affect vested right. The rule making authority should not be permitted normally to act in the past.

This has been quoted with approval by a Bench of three Judges in K. Ravindranath Pai and another Vs. State of Karnataka and another, .

14. The amendment brought out by G.O. (P) 123/93/RD, dated 8th March 1993 is effective from 1st November 1956. By making the State the Unit of appointment to the service namely. Kerala Revenue Ministerial Subordinate Service, the seniority of personnel in the various categories of post coming within its purview is altered. By that alteration, learned Advocate General argues that

seniority in the higher cadre of Deputy Tahsildar must undergo sea-change. It is his further argument that the seniority in the cadre of Tahsildar and also Deputy Collector must have the impact of this amendment.

This argument cannot be taken note of by a Court of law. In K. Narayanan and others Vs. State of Karnataka and others, . Their Lordships have categorically held that giving appointment to a person to a higher post in a different carde in which he has never worked is violative of the constitutional guarantee of those who are working in those cadres. It is also said that, if such an attempt is made, it is against the basic principle of recruitment to any service. So the attempt of the Government and the Board of Revenue to give promotions it personnel who had never worked in the cadres of Deputy Tahsildars and Tahsildars and then to the carde of Deputy Collector on the basis of their seniority in the Revenue Ministerial Subordinate Service on account of the retorspective amendment of 8th March 1993 is one which is against the basic principle of recruitment to any service. This attempt will be to unsettle the vested rights obtained by those who have already entered those cadres. When they entered those cadres, their enitry was strictly in accordance with the rules then in force. They got their promotions depending on their eligibility, seniority and qualification, as on the date of occurrence of the vacancy, in the higher cadres. After entering the higher cadres, they successfully completed their probation and got it declared as well. The right so obtained by them, which is a vested right, can under no circumstance be taken away. Now the attempt is to take away those vested rights even without amending the Special Rules governing those service. The rules governing the service of Deputy Tahsildar, Tahsildar and Deputy Collector have not been changed so far. The amendment is brought out only to the Kerala Revenue Ministerial Subordinate Service. That amendment cannot in any view of the matter affect personnel in the other services. The Explanatory Note attached to the amendment brought out by G.O. (P) 123/93/RD, even though is not part of the Notification, is worth reading:

Government consider it necessary to make suitable provisions in the Special Rules to bring all categories of posts coming under the Kerala Revenue Ministerial Subordinate Service, 1985 in the Land Revenue Department into a State Unit Sysetm with effect from 1st November 1956 with the objective to ensure equal chances of promotion to all persons in the Department.

The equal chances of promotion envisaged by the Note can only be the chances of promotion of personnel in the village steam. It is only to safeguard the interest of personnel in the Kerala Revenue Ministerial Subordinate Service and that service only. It cannot have any impact on the other three services. This amendment can in no way affect the seniority of personnel who had already gone to the higher cadres governed by different Special Rules in any manner whatsoever.

15. The third Kerala Pay Commission recommended the integration of Village staff with the Revenue staff. Pursuant thereto Government issued G.O. (Ms.)

911/84/RD, dated 10th September 1984. By that order Lower Division Clerks were integrated with Village Assistants and Upper Division Clerks with Village Officers. It was to be with effect from 10th September 1984 itself. The principles governing the integration are contained in the appendix to that Government Order. It is stated that on the crucial date of integration all those who are Village Officers and Upper Division Clerks will be integrated into one unit and an integrated seniority list will be maintained. Their inter se seniority will be fixed on the basis of their appointment to the respective categories, with the rider that service as Village Officer before 1st January 1968 will be ignored. Likewise the Lower Division Clerks and Village Assistants are directed to be integrated into one unit. Their inter se seniority will be maintained on the basis of their appointment to the respective categories. But the service rendered by Village Assistants before 1st January 1968 will be ignored. The Government further provided that the Village Assistants will be given exemption for a period of two years, from passing the obligatory test such as Account Test etc., prescribed for the post of Upper Division Clerk. They were also given exemption for a period of two years from passing the obligatory test prescribed for the post of Village Officer. The Village Officers were given exemption for a period of two years from acquiring the test qualification for promotion as Revenue Inspector, Deputy Tahsildar etc. Thereafter Government by G.O. (P) 567/89/RD, dated 12,th July 1989 amended the Special Rules for the categories of Head Clerk/Head Accountant, Firka Revenue Inspector/Special Revenue Inspector, Upper Division Clerk and Lower Division Clerk of the Kerala Land Revenue Department included in the Kerala Ministerial Subordinate Service, 1985. By the said amendment, Village Officers and Village Assistants as on 10th September 1984 were allowed time till 1st April 1989 to pass the qualifying test. The period of exemption granted by the said amendment was further extended by G.O. (Ms.) 739/89/RD, dated 31st October 1989 for the period upto 30th June 1990. Even after giving the time till 30th June 1990, some of the Village Officers and Special Village Officers as also Upper Division Clerks did not pass the required test. Thereupon Government decided that those officers who have not passed the test may not be reverted to the category of Lower Division Clerks/Village Assistants for want of test qualification as per Government Letter No. 32224/D2/90/RD, dated 20th October 1990. That letter was challenged before this Court in O.P. No. 11565 of 1991. This Court considered the effect of various orders of Government in the said case. It was held that the cumulative effect is that those officers, who got regular promotion to the cadre of Village Officer prior to the date on which Special Rules came into force are entitled to continue in that post, irrespective of the fact that whether they passed the test or not. It means thait officers who got promotion to the post of Village Officer on regular basis prior to the Special Rules were not to face reversion on 30th June 1990 on the ground that they have not acquired test qualification. But for further promotion, they must pass the tests prescribed by the Special Rules. Village Officers who are holding the post on temporary basis and who have not acquired the test qualification or have not completed the age of 50 years have to face reversion. Thereafter, they can aspire for promotion only on acquiring the test qualification or on completing the age of 50 years. This Court further held that after reverting the unqualified Village Officers, the posts will have to be filled up by qualified hands as per the Special Rules. This decision was taken up in appeal, the judgment of which is reported as Gopalakrishnan Nair v. State of Kerala ILR 1992 Ker 739. The Bench took the view that the Government letter dated 20th October 1990 directing not to revert the category of Lower Division Clerk/Village Assistant for want of test qualification is invalid and inoperative. This Court directed the Government to examine all aspects of the problem and to consider whether it is a fit case where the powers granted under Rule 39 of the Kerala State and Subordinate Service Rules has to be exercised so as to avoid reversion, of the Village Officers promoted after 10th September 1984 for want of test qualifications. Their Lordships also stated that the cut off date as 30th June 1990 will stand modified as 12th July 1991 as the cut off date for review of promotion and effecting reversion. Presumably in compliance with that direction Government issued G.O. (Ms.) 360/92/RD, dated 4th September 1992. In that order, Government quoted the judgments of the Single Judge and the Division Bench in extenso and extended the time for exemption upto 12th July 1991. For a proper understanding of the operative portion of that order, we read paragraph 8 of the same:

In the above circumstances, Government have examined the scope of invoking Rule 39 of the General Rules and they are convinced that unless the date for passing test qualification is not extended upto 12th July 1991, it will cause hardship to those who originally belonged to the Village Establishment and who were Village Officers/Upper Division Clerks as on 30th June 1990. In view of the peculiar facta and circumstances of the case they are pleased to invoke Rule 39 of the General Rules and order that,-

(i) Pending issuance of the amendment to the Special Rules, persons in the category of Upper Division Clerk/Village Officer including Special Village Officer, who originally belonged to the Village Establishment and who were Village Officers/Upper Division Clerks on 30th June 1990 will be exempted from passing the prescribed tests and they will not be reverted to the category of Lower Division Clerks/Village Assistants for want of test qualification prescribed in item No. (2) of the table in G.O. (P) No. 601/85/RD, dated 12th June 1985 and as amended as per G.O. (P) 567/89/RD, dated 12th July 1989 and that they will be given promotions to the higher cadres as and when they acquire test qualifications or attain the age of 50 whichever is earlier (pending amendment of the Special Rules); and

(ii) The time limit granted to the Village Officers for passing the tests prescribed in the Special Rules will stand extended upto 12th July 1991 in relaxation of Rule 13-A of the General Rules.

16. Even though Government ordered integration of the Revenue staff and Village staff by order dated 10th September 1984, the rules were framed for the

said purpose only on 12th July 1989. By that Special Rule, pass in test was made compulsory for promotion to the cadre of Village Officer/Upper Division Clerk. Since the rule was brought into force with effect from 12th July 1989, the officers are entitled to get 2 years time there from for passing the test. Thus, they are to have the time for passing the test till 12th July 1991. That was the reason for this Court in Gopalakrishnan Nair''s case I.L.R 1992 Ker 739 to direct the Government to examine the feasibility of extending the time till 12th July 1991 even by invoking Rule 39 of the General Rules. By this exemption they could have only continued to hold the post of Village Officer/Upper Division Clerk.

17. Prior to the issue of Government Order dated 4th September 1992, Government had issued certain clarifications. Village Officers who were in the integrated list as on 10th September 1984 were allowed to be promoted to the higher posts of Head Clerk/Revenue Inspector or in any still higher posts upto 30th June 1990, according to their ranks in the seniority list subject of course to the availability of vacancies, without their passing the test or attaining the age of 50 years. After 30th June 1990 those who have either passed the test or have attained the age of 50 years by that date alone could continue in the promoted post of Head Clerk/Revenue Inspector or in any higher post. Those who have neither passed the test nor attained the age of 50 by 30th June 1990, but had been promoted to higher posts after 30th June 1990 by virtue of their ranking in the integrated list have no right to continue in the higher posts. They were not eligible for promotion either. It was also provided that persons who faced reversion on account of the acquisition of the qualification on 1st July 1990 will not loose their seniority in the integrated list and they will be entitled to promotion in accordance with their ranks in the same list on their passing test or attaining 50 years of age subsequently. While the situation was such that G.O. dated 4th April 1992 happened to be issued. Now the learned Additional Advocate General wants the Village Officers/Upper Division Clerks who got promotion on or before 30th June 1990 should continue to hold the post irrespective of the fact whether they acquired the test qualification or attained the age of 50 years. Even persons who have not acquired the test qualification or have not completed the age of 50 years are entitled to get promotion to the cadre of Upper Division Clerks/Village Officers for the period between 30th June 1990 and 12th July 1991. Those promotees if are not having the test qualification or have not attained the age of 50 years as on 12th July 1991 will have to face reversion to the cadre of Lower Division Clerks/Village Assistants. Persons who are holding the post of Village Officer/Upper Division Clerk, it is argued by the learned Additional Advocate General can get promotion to the higher cadres only after getting the test qualification or on their attaining the age of 50 years. The only snag here is whether a person who faces reversion on 13th July 1991 is to carry with him his seniority in the integrated list for further promotion on acquiring the qualification or on attaining the age of 50 years. According to the learned Additional Advocate General, the person who faces reversion should continue to have the seniority according to his ranking in the

integrated list. This will lead to an absurd situation. When he faces reversion, he will not have the seniority in the integrated list retained by him. He will have to surrender his seniority in favour of those who got promotion on account of his test qualification or on account of his completing the age of 50 years. The person who faces reversion when subsequently gets promotion to the higher cadre can only be ranked below the person who got promotion earlier. In this view of the matter G.O. (Ms.) 360/92/RD, dated 4th September 1992 has to be read in the above light only. In other words, by this Government Order no exemption is given to anyone for claiming promotion to the higher cadres.

18. One other aspect which remains to be dealt with is the effect of Rule 2(6)(f) of the Kerala State and Subordinate Service Rules. Rule 2(6)(f) states that a person is said to be on duty as a member of service, when he is given the benefit of national promotion consequent on revision of rank and seniority etc. This provision has been taken by the Board of Revenue and the State to mean that a person can be considered to be on probation with effect from a notional date of promotion. We are afraid that this interpretation cannot be accepted. In Janardhanan''s case 1991 (1) KLT 875 this Court has categorically held that a person can be said to be on probation with effect from the date on which he was actually discharging the duty attached to that post. A person who got notional promotion to a post with effect from an anterior date can by no stretch of imagination be considered to have been discharging the duties attached to that post. This should be the normal understanding of the rules. But in certain unforeseen, situations, this may lead to injustice to a particular officer. In such a situation at the direction of the Court it must be possible for treating him as having completed the probation in order to prevent injustice. Only to such cases can the said provision be pressed into service. In a case where an officer was denied promotion in spite of his putting forth the claim for the same and ultimately if he wins in Court, then he will have his probation declared with an anterior date on account of the decision rendered by the Court. Apart from this, according to us, the provision contained in Rule 2(6)(f) cannot have any application of a general character where notional dates are assigned in the case of large number of officers. Rule 2(6)(f) has to be read down in the manner indicated above.

19. One specific case has to be made mention of here namely O.P. 7205 of 1991. In that case the Petitioner joined as Village Officer on 10th August 1963. He became Firka Inspector on 1st November 1971. He was promoted as Deputy Tahsildar on 22nd November 1991. Subsequently he became Tahsildar on 14th September 1994 pursuant to an order passed by this Court in C.M.P. 4572 of 1994. Thereafter he was promoted to the cadre of Deputy Collector on 16th November 1994 as per order passed in C.M.P. No. 26802/94. The Petitioner Sri Balan Menon would contend that he was entitled to be promoted to the cadre of Deputy Tahsildar on 7th January 1983, but he was not given his due promotion. It is a fact that he did not get promotion to the cadre of Deputy Tahsildar on any date prior to 22nd November 1991. A large number of officers from the Revenue

Ministerial Subordinate Service got promotion to the cadre of Deputy; Tahsildar and got their probation declared in that cadre. So when he got promotion to the cadre of Deputy Tahsildar, he can be ranked only below those persons whose probation in that cadre was declared earlier. Only after completing the probation in that cadre and depending on his seniority in that cadre could he claim promotion to the post of Tahsildar. Be that as it may, he became Tahsildar on 14th September 1994. As per the Special Rule governing the Kerala Revenue Service to which the category of Tahsildar belong a person should be on probation for a period of two years within a continuous period of 3 years from the date of his joining the duty. It is settled law that an officer can get promotion to the higher cadre only after completing his probation in the lower cadre. So, Mr. Balan Menon should have completed the probation in the cadre of Tahsildar as per Rule 7 of the Kerala Revenue Service Rules for becoming entitled to for getting himself qualified to be considered for promotion to the cadre of Deputy Collector. He has no case that he had satisfactorily completed probation in the cadre of Tahsildar. On that short ground his promotion to the cadre of Deputy Collector cannot be sustained. No sanctity can be given to that posting on the ground that that order happened to be issued pursuant to the interim order passed by this Court. At the time of granting interim order, the learned Single Judge had not examined the legal right of the Petitioner for claiming promotion. At this juncture it is worthwhile to note the following observation made by the Supreme Court in State of Uttar Pradesh and others Vs. Km. Ramona Perhar, . "Passing of interim orders, more particularly of a mandatory nature is neither a matter of course nor a matter of charity. The power to grant interim orders is coupled with the duty to consider all the relevant facts and legal principles relevant in that behalf". We are afraid that the learned Judge has not taken note of the true import of the legal provisions governing the service before issuing that order.

20. In view of what has been stated above, we vacate all interim orders passed in all the C.M.Ps. in all these proceedings. The State and the Revenue Board are directed to conform to the principles stated herein above and to prepare a seniority list of officers in various cadres governed by all the 4 Special Rules namely Kerala Revenue Ministerial Subordinate Service, Kerala Revenue Subordinate Service, Kerala Revenue Service and Kerala Civil Service Executive Rules. This exercise must be taken up at the earliest and the lists prepared within 3 months from the date of receipt of a copy of this judgment. Depending on the seniority list so prepared, persons who got promotion contrary to the principles stated in this judgment must be reverted and those who were denied promotion must be given promotion. The orders in that regard must also be issued within two weeks from the date of preparation of the seniority list, that is within months the entire reversion and promotion must be carried out. Since the entire interim orders have been vacated, for promotion to the cadres of Tahsildars and above, the seniority list of 21st June 1991 which is updated should be the basis. The persons who are holding the posts of Deputy Tahsildars

as on today are not to be reverted until the list as ordered above is prepared.

The Writ Appeals and Original Petitions are disposed of in the above terms. We make no order as to costs. (Writ Appeal 162/91 and 182/91 will stand dismissed).