

In the High Court of Judicature at Madras

Dated:28.02.2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Petition Nos.11296 to 11298/2003 & 28787/2004

and WPMP.Nos.14171/03, 34972/04 & WVMP.No.2183/2004

W.P.No.11296 of 2003:

Registration Department S.C./S.T.

And M.B.C. Employees General

Welfare Sangam

No.18 Luz ARUS Church Road

Pattinapakkam, Chennai 28

rep. by its General Secretary

S. Balakrishnan.

... Petitioner

vs.

1. S. Chandrasekar

2. The Government of Tamilnadu

rep. by its Secretary

Backward Classes and Most
Backward Classes Welfare (BCC)

Department, Secretariat,
Chennai 9.

3. The Inspector General of Registration

120 Santhome High Road

Chennai 28.

4. The Registrar

Tamil Nadu Administrative Tribunal

Chennai 104.

... Respondents

W.P.No.11297 of 2003:

Registration Department S.C./S.T.

And M.B.C. Employees General

Welfare Sangam

No.18 Luz Church Road
Pattinapakkam, Chennai 28
rep. by its President
R. Sundaramoorthy.

.. Petitioner

vs.

1. The Registration Department
Backward Class Association
(Reg.No.274/98) rep. by
its President G.R. Murali.
 2. The Government of Tamil Nadu
rep. by its Secretary
Commercial Taxes Department
Fort St. George, Chennai 9.
 3. The Inspector General of Registration
120 Santhome High Road
Chennai 28.
 4. The Registrar
Tamil Nadu Administrative Tribunal
Chennai 104.
 5. M. Sakthivel (R5 impleaded as per order of Court dt. 29.1.04
in WPMP 1264/2004)
 6. V. Shanmugam (R6 impleaded as per order dt. 19.1.05 in WPMP.
46700/04)
- .. Respondents

W.P.No.11298 of 2003:

K. Subramanian

.. Petitioner

vs.

1. The State of Tamil Nadu
rep. by its Secretary
Commercial Taxes Department
Fort St. George
Chennai 9.
2. The Special Commissioner and
Commissioner of Commercial
Taxes Department,
Chepauk, Chennai 5.
3. The Registrar
Tamil Nadu Administrative Tribunal
Chennai 104.

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4. A. Alagupillai
5. R. Rani
6. M.S. Kathiravan
7. R. Krishnan
8. N. Prabakaran (RR4 to 8 impleaded as per order of Court dt. 4.12.03 in WPMP 42727/03)
9. V. Subramanian
10. N. Banumathi
11. K. Ragini
12. P.L. Gabriel
13. L. Shymala
14. E. Kumar
15. R. Vasanthakumari
16. P. Panneer Selvam
17. S. Anandaraj
18. L. Sadanandan
19. K. Visalakshi
20. B. Kannan
21. S. Ramaswamy
22. K. Gurusamy
23. V. Manjula bai
24. M. Azhagammal
25. B. Blokendra Prasad
26. N. Suyamprakasam
27. K. Anbumani
28. P.T. Sarangarajan
29. M. Parameswari
30. K. Sriram
31. C. Rajagopalan
32. P. Mahendran
33. D. Jeya
34. M. Rajeswari
35. K. Ambikapathy
36. M. Mohan
37. R. Krishnan
38. P. Balamanickam
39. S. Kajamohaideen
40. V. Dhandapani
41. K. Sankaranarayanan
42. K. Rajamani
43. S. Kaliammal
44. R. Suriyakalavathi
45. M. Veerabanu
46. S. Poongothai
47. J. Rosaline Sundari
48. N. Sankaralingam
49. V. Nallaperumal
50. S. Murugaiah
51. A. Jalaludeen
52. S.S. Rajendran (RR-9 to 52 impleaded as per order of Court dt. 18.2.2004 in WPMP 1722/2004)

53. M. Raman
54. D. Krishnakumar (RR-53 & 54 impleaded as per order of this Court dt. 27.4.2004 in WPMP 8038/2004)
55. D. Thangavel
56. M. Asaithambi RR-55 & 56 impleaded as per order of this Court dt. 13.7.2004 in WPMP 20224/2004)
.. Respondents

W.P.No.28787 of 2004:

1. V. Adhimoolam
2. S. Ganesan
3. E. Sarasakumari
4. V. Anbu Mohan .. Petitioners

1. N. Jayaraman
2. The Secretary to Government
Backward Class and Most Backward
Class Welfare (DCC) Department
Chennai 9.
3. The Secretary to Government
Commercial Taxes Department
Chennai 9.
4. S. Shanmuganathan
5. The Special Commissioner and
Commissioner of Commercial Taxes
Chepauk, Chennai 5.
6. The Registrar
Tamil Nadu Administrative Tribunal
Chennai 104.
7. M. Raman RR-7 & 8 impleaded as per order dt. 19.1.2005 in
WPMP 41453/2004)
8. D. Krishnakumar .. Respondents

WP. 11296/2003 & WP 11297/2003

Petitions filed under Article 226 of Constitution of India to issue Writ of certiorari calling for the records of the impugned orders of the 4th respondent in OA. 2717/2000 and O.A. 3551/2000 dt. 22.10.2002 respectively and quash the same.

WP 11298 of 2003

Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus calling for the records of the impugned order passed by the Hon'ble Tamilnadu Administrative Tribunal in O.A. 6533/2001, dt. 22.10.2002 (batchcase) and the panel drawn by the special Commissioner and Commissioner of commercial Taxes Department Madras. 5. (2nd Respondent herein) in proceedings No. P2/32308/2000 dt. 26.9.2001, and quash the same and to direct the second respondent to prepare the panel for the post of ACTOS from among the Assistants for the year 2000 including the petitioner name by following rule of reservation and to appoint me as ACTO recruitment by transfer of Service as per rules.

WP 28787 of 2004

Petition filed under Art 226 of the Constitution of India to issue Certiorarified Mandamus calling for the records of the Hon'ble Tamilnadu Administrative Tribunal, Chennai, in the order dt. 22.10.2002 in O.A. 1219/2002 and quash the said order and consequently direct the Respondents 2 to 4 to prepare the panel for the post of Assistant Commercial Tax Officer, by applying the rule of reservation while following the method of recruitment by transfer from the post of Assistant in the Commercial taxes Department.

For petitioners : Mr. K. Chandru, Sr. Counsel
in WP.11296 to for M/s. Muthumani Doraisami
11298/2003.

For petitioners : Mr. R. Yashood Vardhan
WP.28787/2004.

For respondents : Mr. E. Sampath Kumar
in WP.No.11296/03 Government Advocate for R.2 & R.3

No appearance for R.1.

For respondents : Mr. P. Jayaraman, Sr. Counsel
in WP.No.11297/03 for Mr. G. Thangavel for R.1

Mr. E. Sampath Kumar
Government Advocate for R.2 & R.3

Mr. R. Rangaramanujam for R.5

Ms. G. Devi for R.6

For respondents : Mr. E. Sampath Kumar
in WP.No.11298/03 Government Advocate for R.1 & R.2

Mr. V. Vijayashankar
for R.4 to 8 and R.9 to R.52

Mr. R. Saravanakumar for R.53 & R.54

Mr. V. Ravikumar for R.55 & R.56

For respondents : Mr. E. Sampath Kumar,
in W.P.No.28787 Government Advocate for R.2,3&5
of 2004

Mr. R. Rangaramanujam for R.4

Mr. R. Saravanakumar for R.7 & R.8

No appearance for R.1

..

COMMON ORDER

(Order of the Court was made by P. SATHASIVAM, J.,)

Aggrieved by the common order of the Tamil Nadu Administrative Tribunal, Chennai dated 22.10.2002 made in O.A.No.3551 of 2000 etc., Registration Department SC/ST/MBC Employees General Welfare Sangam and others have filed the above writ petitions.

2. Tamil Nadu Backward Class Officials Association - applicant in O.A.No.9044 of 1997 has prayed for setting aside the letter of the Secretary to Government, Commercial Taxes and Hindu Religious Department, Chennai dated 06.10.1997. The other applicants mostly filed for challenging the letter of the Government dated 23.02.1999 issued by the Backward Class and Most Backward Classes Welfare Department, Government of Tamil Nadu. In other applications, the Assistants working in the Registration Department have challenged the panel prepared for appointment to the post of Sub-Registrar Grade II and published in Government letters dated 03.12.1997, 03.06.1999 and 24.09.1999.

3. The following facts are culled out from various applications filed before the Tribunal. The Government by its order dated 12.11.1993 has upgraded 551 posts of Junior Assistants and Typists, so as to enable them to draw salary of Assistant with a view to give them pecuniary advantages under the guise of promotional opportunities. As per the provisions of Tamil Nadu Commercial Taxes Subordinate Service Rules, the qualification for a person to be included in the panel for appointment to the post of Assistant Commercial Tax Officer by transfer is eight years of total service in Government, of which not less than 2 years should be spent as Assistant, as on crucial date. The upgraded Junior Assistants / Typists holding

the post for two years cannot be made eligible for inclusion in the list of Assistant Commercial Tax Officer (in short "ACTO") by transfer. He can be included in the list only after he has been regularly promoted as Assistant in the service. The Special Commissioner and Commissioner of Commercial Taxes has rejected the request of certain upgraded Assistants for inclusion in the list of Assistant Commercial Tax Officer for the year 1996-1997, on the ground that they have not rendered two years of service as Assistant. Therefore, by letter dated 06.10.1997, the Government made it clear that two years in the upgraded post of Junior Assistant / Typist as enough qualification for inclusion in the list of ACTOs., is against the Rules and liable to be struck down.

4. The Assistants working in the Commercial Taxes Department filed other applications challenging the reservation provided in promotion while appointing ACTO from among the Assistants. All the applicants are initially recruited as Junior Assistants in the Commercial Tax Department and after completion of qualifying years of service and after passing of Departmental tests, they were promoted as Assistants, which is in Ministerial Service. The applicants became Assistants in the year 1991 and 1993. The next post in the hierarchy is ACTO, which is a Subordinate Service. The method of appointment to the category of ACTO is either by way of direct recruitment, which is done by the Tamil Nadu Public Service Commission or by way of recruitment by transfer. The post of ACTO, which is a Subordinate Service, the recruitment by way of transfer is made from among the clerks employed in Commercial Taxes Department and Clerks and Superintendents in any of the Commercial Taxes sections in the Office of the Commissioner of Commercial Taxes and all these persons belong to Tamil Nadu Ministerial Service. Appointment as ACTO from among the Assistants is only on the basis of seniority, subject to passing the eligibility test. In the order dated 29.02.2000, the Secretary to Government, Commercial Taxes Department, Chennai has stated that candidates (Assistants) who are working in the Tamil Nadu Ministerial Service are transferred as ACTOs., under the Tamil Nadu Commercial Taxes Subordinate Service for the year 1999. The grievance of the applicants is that the Department has provided reservation while appointing ACTOs., from among the Assistants. The Assistants belong to Ministerial Service and they have to be appointed by transfer of service as ACTOs., which is a Subordinate Service. The post of ACTO carries higher scale of pay with greater responsibility and therefore, it is nothing but promotion so far as Assistants are concerned. The Assistants, who are junior to some of the applicants have been promoted as ACTOs., which is illegal and this has been made possible because Government has followed the reservation policy, while granting promotion to them. Such reservation in promotion cannot be provided in view of the direction of the Supreme Court in the case of Indira Sawhney and R.K. Sabarwal cases, where it has

been categorically held that no reservation can be provided in promotion.

5. Some of the applicants who are working as Assistants in the Registration Department have filed applications seeking to set aside Rule 5 of the Special Rules for Tamil Nadu Registration Subordinate Service and the proceedings of the Secretary to Government, Backward Class and Most Backward Class Welfare Department dated 23.02.1999. So far as this Rule and the Government Order make it applicable the rule of reservation of appointment to the post of Sub Registrar Grade II by recruitment by transfer of Assistants in the Registration Department. The said Rule 5 provides for reservation for Backward Class and Most Backward Class in recruitment by transfer and also by direct recruitment. Some of the applicants who have filed applications belong to forward community, but most of them belong to Backward Class community. Because of the rule of reservation, the applicants in Original Applications are not able to get appointment in the post of Sub-Registrar Grade II even though they have become Assistants as early as in 1986, whereas in the case of Assistants belonging to Most Backward Class, they are able to get the post of Sub-Registrar even though they have become Assistants only in the year 1995. Reservation is not permissible in the matter of appointment to a higher post in respect of Backward Class and Most Backward classes. The Government is wrong in proceeding to make appointments to the post of Sub-Registrar Grade II by adopting the principle of reservation. Even though the appointment is by way of transfer of service, it actually amounts to promotion and therefore there can be no reservation in the case of promotions.

6. The Registration Department Backward Class Association represented by its President G.R. Murali and others have filed separate original application before the Tamil Nadu Administrative Tribunal challenging the panel of the year 1997-98 fit for appointment to the post of Sub-Registrar Grade II issued in the proceedings dated 3.12.1997, another panel fit for appointment to the post of Sub-Registrar Grade II for the panel year 1998-99 issued in the proceedings dated 03.06.1999 and another panel fit for appointment to the post of Sub-Registrar Grade II for the panel year 1999-2000 issued in proceedings dated 24.09.1999, which were prepared by following the rule of reservation as contemplated in the relevant rules by the Registration and Commercial Taxes Department, Government of Tamil Nadu. After hearing all the parties, the Tribunal by the order impugned quashed the said panel dated 03.12.1997, 03.06.1999 and 24.09.1999 on the ground that "recruitment by transfer" is nothing but promotion, as such "rule of reservation" shall not be applicable.

7. The Government filed a counter before the Tribunal highlighting various Government Orders, the service rendered in the upgraded post of Assistants can also be taken into account for the purpose of qualifying service for promotion as ACTO and therefore the Government letter is in accordance with rules and is not arbitrary.

8. The questions considered before the Tribunal are:

(i) Whether reservation for Backward Class and Most Backward Class can be provided in case of appointment by transfer to the posts of Assistant Commercial Tax Officer, Sub-Registrar Grade II and Deputy Tahsildar, which all belong to a State Subordinate Service from among the members of Tamil Nadu Ministerial Service;

(ii) Whether the impugned letter and the panels prepared by the Government for the aforesaid posts for 1998-1999 and subsequent years adopting the principles of reservation is liable to be set aside as it is oppose to law laid down by the Supreme Court in Indira Sawhnay's case."

9. The Tribunal, on consideration of various materials placed and in the light of the decision of the Supreme Court rendered in Indira Sawhnay's case (AIR 1993 S.C. 477) as well as Article 14, 16(4), 16(4-A) of the Constitution of India, various Government Orders etc., set aside the Government letter dated 23.02.1999 and the panels dated 03.12.1997, 03.06.1999 and 24.09.1999 as illegal and violative of law laid down by Supreme Court in Indira Sawhnay's case and ultimately allowed all the applications. Questioning the same, present writ petitions have been filed.

10. Heard the learned counsel for the petitioners as well as respondents.

11. The subject matter of the dispute relates to promoting Assistants to the post of Assistant Commercial Tax Officer / Sub-Registrar Grade II / Deputy Tahsildar. It is the grievance of the applicants before the Tribunal that by wrong approach and interpretation of the Government by applying reservation for the promotional posts, their juniors were promoted to the above mentioned promotional posts and they were deprived of the same. The pith and substance of the grievance of the applicants is that though reservation is applicable at the initial appointment, the same is not applicable to in the case of promotion or recruitment by transfer. We have already referred to the fact that at the relevant time the applicants

were working in the feeder category as Assistants in the Ministerial Service and eligible to be promoted as Assistant Commercial Tax officer / Sub-Registrar Grade II / Deputy Tahsildar all State Subordinate Service. In other words, the above mentioned posts can be filled up only by way of direct recruitment and recruitment by transfer from one service to another service and not by way of promotion.

12. In this regard, it is useful to refer the relevant rules applicable to the applicants. Rule 2 (13) of the Tamil Nadu State and Subordinate Service Rules defines "promotion".

" Rule 2 (13)

"Promotion"

113. "Promotion" means the appointment of a member of any category or grade of a service or class of service to a higher category or grade of such service or class;

"Recruited direct"

(14) A candidate is said to be "recruited direct" to a service, class, category or post when, in case his first appointment thereto has to be made in consultation with the Commission, on the date of its notification inviting applications for the recruitment and in any other case, at the time of his first appointment thereto, he is not in the service of the Government of India or the Government of a State:

Provided that for the purposes of this definition a person shall be deemed to be not in the service of the Government of India or the Government of a State-

(i) if a period of five years has not elapsed since his first appointment to a service of the Government of India or the Government of a State; or

(ii) if he belongs to the Scheduled Castes, Scheduled Tribes or Backward Classes;

"Recruited by transfer"

(15) A candidate is said to be "recruited by transfer" to a service -

(a) if, at the time of his first appointment thereto, he is either a full member or an approved probationer in the Madras High Court Service or in any other service, the rules for which prescribe a period of probation for member thereof; or

(b) in case, at the time of his first appointment thereto, he is the holder

of a post which has been included in another service but for which no probation has been prescribed, if he has put in that post satisfactory service for a total period of two years on duty within a continuous period of three years.

Explanation.- Where the special rules for a service provide for recruitment to that service or to any class or category thereof by transfer from any specified service, class or category, a candidate need not, for the purposes of such recruitment, be a full member of an approved probationer in the service, class or category so specified, provided he is a full member or an approved probationer in any other service, class or category; "

13. As pointed out by the Tribunal, though communal reservation was being followed in the matter of Government employment prior to independence, after attaining republic, our Constitution itself provides (vide Article 16) equality of opportunity irrespective caste, religion, sex etc., in the matter of public employment. Consequent to the striking down communal G.Os., Article 16 (4) was amended providing reservation for Backward communities in the matter of public appointments. In this regard it is useful to refer Article 16 (4).

"16. Equality of opportunity in matters of public employment.-

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. "

The said provision enables the State Governments to make provision for reservation in public appointments for backward class peoples, two Commissions were appointed to identify the Backward Class and Most Backward Class communities. The Mandal Commission submitted its report and Government of India has chosen to adopt and as a follow up action issued various Government Orders. Those Government Orders providing reservation and appointment in public offices in favour of Backward communities is a subject matter of litigation before the Supreme Court in Indira Sawhney vs. Union of India (cited supra). Since the judgment in the Mandal Commission is a landmark judgment in the field of "reservation", it is useful to refer the principles and directions issued in the said

judgment. The following conclusion / observation of the Supreme Court are relevant.

"307. The initial appointments may be made at various levels or grades of the hierarchy in the service. There is no warrant in Article 16(4) to conclude from the expression "reservation of appointments or posts" that reservation extends not merely to the initial appointment, but to every stage of promotion. Once appointed in a service, any further discrimination in matters relating to conditions of service, such as salary, increments, promotions, retirement benefits, etc. is constitutionally impermissible, it being the very negation of equality, fairness and justice.

309. In whichever post that a member of a backward class is appointed, reservation provisions are attracted at the stage of his initial appointment and not subsequently. Further promotions must be governed by common rules applicable to all employees of the respective grades.

375. There is no doubt that the backward classes should not only have adequate representation in the lowest cadres of services but they should also aspire to secure adequate representation in the higher services as well. Article 16(4) permits reservation for backward classes by way of direct recruitment to any of the cadres in the State services. Reservation can be made in direct recruitment to any cadre or service from Class IV to Class I of the State services. The majority in Rangachari case (1962) 2 SCR 586 = AIR 1962 SC 36 has read in Article 16(4), what is not there, to support the element of qualitative representation.

376. The reservation permissible under Article 16(4) can only be "in favour of any backward class of citizens" and not for individuals. Article 16(1) guarantees a right to an individual citizen whereas Article 16(4) permits protective discrimination in favour of a class. It is, therefore, mandatory that the opportunity to compete for the reserve posts has to be

given to a class and not to the individuals. When direct recruitment to a service is made the "backward Class" as a whole is given an opportunity to be considered for the reserve posts. Every member of the said class has a right to compete. But that is not true of the process of promotion. The promotional posts are not offered to the backward class. Only the individuals are benefited. The object, context and the plain language of Article 16(4) make it clear that the job reservation can be done only in the direct recruitment and not when the higher posts are filled by way of promotion.

377. It is not possible to read in these lines the permissibility of reservation even in the process of promotion. This is the only interpretation which can be given in the context and also in conformity with the service jurisprudence.

Question No.7:

Whether Clause (4) of Article 16 provides reservation only in the matter of initial appointments/ direct recruitment or does it contemplate and provide for reservations being made in the matter of promotion as well?

827. We find it difficult to agree with the view in Rangachari that Article 16(4) contemplates or permits reservation in promotions as well. "

14. It is clear that after the said decision, the Government shall not adopt policy of reservation in promotion so far as Backward Class communities are concerned. Reservation Policy in the matter of promotion is permissible only in the case of SC/ST, for which an amendment was brought in by inserting 16(4-A) with effect from 17.06.1995. Based on the law declared by the Supreme Court in Indra Sawhney's case, the applicants who were working as Assistants in Registration / Revenue and Commercial Tax Departments approached the Tribunal, questioning the three panels and giving promotion by applying the rule of reservation. It is clear from the Constitutional provisions as well as the judgment in Indira Sawhney case, though Central and State Governments are empowered to provide reservation for backward class of citizens, there cannot be any further reservation for them in the promotional posts.

15. Now, we shall consider the stand taken by the Government and the beneficiaries of the impugned orders (Government letter and promotion panels) that the appointments were done only by "transfer of service" and they are not "promotions", hence reservation can be done. It is not in dispute that the post of Assistant Commercial Tax Officers/ Sub-Registrar Grade II and Deputy Tahsildar belong to State Subordinate Service. The mode of appointment to these posts are (i) direct recruitment and (ii) recruitment by transfer of service. It is also not in dispute that direct recruitment is done by Service Commission and Reservation is permissible. The mode of appointment is by transfer of service. The persons who are eligible to be appointed to these posts are Assistants and Junior Assistants working in the respective Departments and they are the members of the Tamil Nadu Ministerial Service. The eligible persons, namely Assistants, Junior Assistants are appointed by transfer of service as Sub-Registrar Grade II / ACTO or Deputy Tahsildar, in view of the fact that the above said posts are with higher scale of pay, higher status, and higher rank etc., Their appointments amounts to higher service. It is brought to our notice that the Assistant in the Registration Department is given the scale of pay of Rs.4,000 - 100 - 6000, whereas if he has been appointed as Sub-Registrar Grade II by transfer of service, his pay of scale is Rs.5,300-150-8300. Accordingly, even though it is called as appointment by transfer of service, as rightly observed by the Tribunal, it actually amounts to promotion in rank, status and also higher emoluments.

16. Now, let us consider judicial decisions which explain "promotion" as well as "recruitment by transfer" or "appointments by transfer of service".

(a) In the case of Tarsem Singh vs. State of Punjab reported in 1994 (5) S.C.C. 392 it is held,

"9. Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour. Opting to come to a lower pay scale or to a lower post cannot be considered a promotion, it is rather a demotion."

(b) In State of Rajasthan vs. Fateh Chand Soni reported in 1996 (1) S.C.C. 562, the following conclusion of their Lordships is relevant.

"8. The High Court, in our opinion, was not right in holding that promotion can only be to a higher post in the Service and appointment to a higher scale of an officer holding the same post does not constitute

promotion. In the literal sense the word "promote" means "to advance to a higher position, grade, or honour". So also 'promotion' means "advancement or preferment in honour, dignity, rank, or grade". (See: Webster's Comprehensive Dictionary, International Edn., p.1009). 'Promotion' thus not only covers advancement to a higher position or rank but also implies advancement to a higher grade. In service law also the expression 'promotion' has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post". (See: Union of India vs. S.S. Ranade (1995) 4 SCC 462 at page 468. "

(c) In Union of India vs. S.S. Ranade reported in 1995 (4) S.C.C. 462, the Supreme Court held,

"11. In order to decide whether a post is either equivalent or is higher or lower than another post, one cannot look only at the pay scale for that post. One must also look at the duties and responsibilities that are attached to such posts. "

17. In the light of the above principles, we have to see that the persons all along members of Ministerial Service have to be appointed as State Subordinate Service and they were appointed by transfer of service. We have already demonstrated that the post of Sub-Registrar Grade II / ACTO / Deputy Tahsildar are higher service with higher scale of pay as well as with higher rank. We have also demonstrated the scale of pay of Assistant in the Registration Department as well as his scale of pay after appointment by transfer of service as Sub-Registrar Grade II. As rightly observed by the Tribunal, even though it is called as appointment by transfer of service, it actually amounts to promotion in rank, status and also higher emoluments. We concur with the conclusion of the Tribunal that in the light of the factual details and materials, the transfer of service whatever name it is called, it actually amounts to promotion.

18. Now, let us consider whether reservation is permissible in promotion. We have already referred to Article 16 of the Constitution, which enables the Government to create reservation in respect of backward communities at the time of initial appointment. This was also reiterated in Indira Shawney's case. Further, Clause (4-A) was inserted in Article 16 with effect from 17.06.1995 in order to give due representation to SC/ST in promotions also. The newly added provision, namely 4-A empowers the Government to provide

reservation even in the case of promotion only in respect of SC/ST and not for other communities, including backward class community. In this regard, it is relevant to quote the following conclusion of their Lordships in the case of Commissioner of Commercial Taxes, Hyderabad vs. G. Sethumadhava Rao reported in AIR 1996 S.C. 1915.

"9. The reservation for Scheduled Castes and Scheduled Tribes in contradistinction to the rest of the Indian community and others are classified to accord fundamental right of equality of opportunity to the Scheduled castes and Scheduled Tribes for the purpose of adequate representation in the services under the State. In *Indra Sawhney v. Union of India* (1992) Supp (3) SCR 217: (1992 AIR SCW 3682), a larger bench of nine Judges per majority, in which Justice A.M. Ahmadi, J. (as he then was) did not participate on the issue since it did not directly arise for decision therein, held that reservation of appointment or post under Art.16(4) is confined to initial appointment only and cannot extend to provide reservation in matters of promotion. However, this Court upheld the promotions made until the date of the judgment, namely, November 16, 1992, and held that wherever special rules have not provided reservation in appointment by promotion, the same was permitted to be done within 5 years from that date. The Parliament amended Article 16 by 77th Constitution (Amendment Act) 1995 which came into force from June 17, 1995, incorporating Clause 4A to Art.16 which reads thus:

"Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the States, are not adequately represented in the services under the State".

10. The Parliament by amending the Constitution and introducing Art.16(4A) has removed the base as interpreted by this Court in *Indra Sawhney's case*, (1992 AIR SCW 3682), that appointment does not include promotion by making express provisions that when the State forms an opinion that members of the Scheduled Castes or Scheduled Tribes

are not adequately represented in any service or to any class or classes of base in the service under the State, the State is empowered to make provisions for reservation by promotion. Article 16(1) does not prevent the State from making such a provision. In Indra Sawhney's case also, this Court reiterated that right to equality under Article 16(1) is equally applicable to the Scheduled Caste and Scheduled Tribes and Article 16(4) is not an exception. Reservation is part of the scheme of equality under Article 16(1). Article 16(4-A) would establish that the interpretation put up in Rangachari's Thomas (AIR 1962 SC 36): (AIR 1976 SC 490) and Karamchari Sangh's case, (AIR 1981 SC 298), received parliamentary approval. It would thus be clear that as a principle of law, rule of reservation can apply not only to initial recruitment but also in promotions where the State is of the opinion that Scheduled Castes and Scheduled Tribes are not adequately represented in promotional posts in class or classes of service under the State. It is seen that Rule 22 of the general rules provides reservation for appointment by direct recruitment. By Constitutional parameters and interpretation of law by this Court, reservation under Articles 141B, 16(1) and 16(4) would include reservation in promotion as well. "

19. In the light of the above position it would not be possible for the Court to either give direction for reservation for communities other than SC/ST in the case of promotion or approve any such direction issued by the Tribunal or any other Courts. In this regard it is relevant to refer the case of P.G.I. Of Medical Educational & Research vs. K.L. Narasimhan reported in 1997 (6) S.C.C. 283, wherein the Court held that the Court cannot give mandamus to disobey the Constitution and principle of reservation enshrined in Articles 15 (4) and 16; nor is the Court competent to direct the authorities to disobey the constitutional mandate. It would, therefore, be manifestly illegal to seek a mandamus or direction; nor would the court be justified to issue such mandamus or direction to the appropriate Government to dereserve a vacancy.

20. In the light of the above discussion, we are in agreement with the conclusion arrived at by the Tribunal. We are satisfied that Assistants belonging to Backward class and Most Backward class cannot claim reservation in the matter of higher post of Sub-Registrar Grade II / ACTO / Deputy Tahsildar

without violating the guaranteed fundamental right of equality enshrined in Article 16 (1) of the Constitution. We also hold that since Assistants who are appointed as Sub-Registrar Grade II / ACTO / Deputy Tahsildar get the appointment to the higher post above the post of initial requirement, such appointment is promotion, consequently reservation is not permissible in such appointments. Any provision to the extent it applies to the rule of reservation for appointment is not valid and unconstitutional after five years from the date of judgment in Indira Sawhny's case. We also hold that the reservation of appointments or post under Article 16(4) is confined to initial appointment only and cannot extend to provide reservation in the matter of promotion. If the Government feels that for ensuring adequate representation of Backward class of citizens in any service, class / category, it is necessary to provide for direct recruitment therein, it shall be open to do so. But the reservation in the matter of promotion was permitted for the period of 5 years from the date of judgment i.e., from 16.11.1992 to 15.11.1997. As rightly pointed out by the learned counsel for the respondents all the ingredients of the meaning of "promotion" in Rule 13 are found and only the method is by way of recruitment by transfer in the same Department with higher scale of pay and all the norms of promotion are followed while appointments are made. Therefore, in the case on hand, the "recruitment by transfer" in all these cases in the same Department is deemed to be the "promotion" and for which the rules of reservation does not apply.

Under these circumstances, we are in entire agreement with the conclusion arrived at by the Tribunal and do not find any merit in these petitions. Consequently, the writ petitions fail and the same are dismissed. No costs. Connected WPMPs., and WVMP., are also dismissed.

Sd/
Asst.Registrar

/true copy/सत्यमेव जयते

Sub Asst.Registrar

kh

To

1. The Secretary
Government of Tamilnadu
Backward Classes and Most
Backward Classes Welfare (BCC)
Department, Secretariat,
Chennai 9.

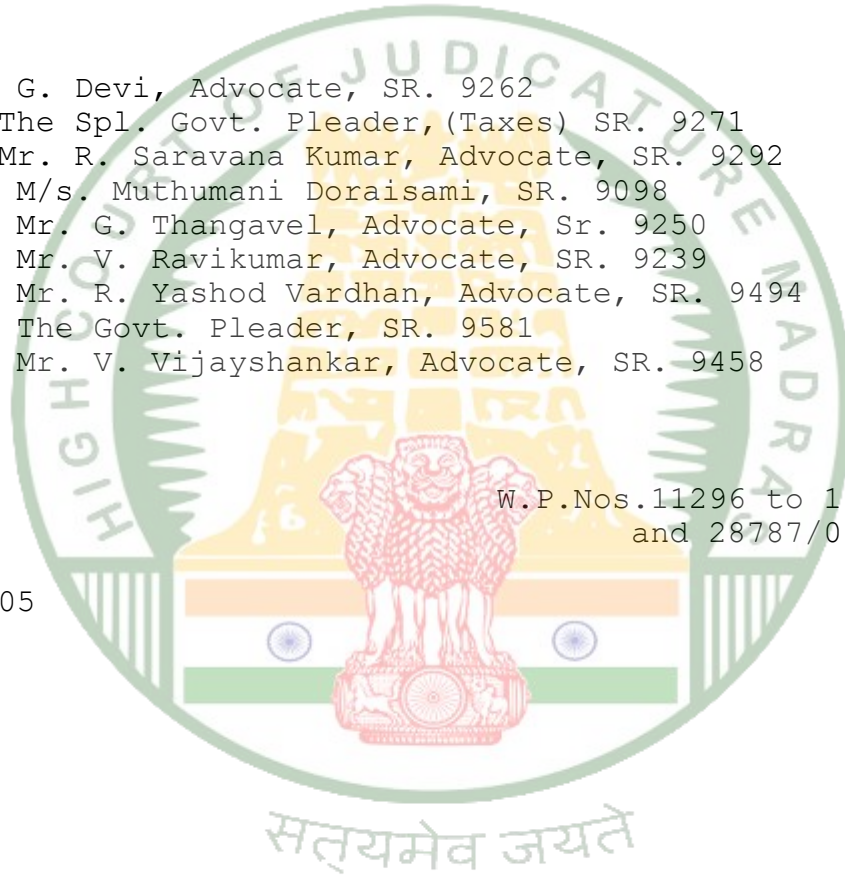
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2. The Inspector General of Registration
120 Santhome High Road
Chennai 28.
3. The Registrar
Tamil Nadu Administrative Tribunal
Chennai 104.
4. The Secretary
State of Tamil Nadu
Commercial Taxes Department
Fort St. George
Chennai 9.
5. The Special Commissioner and
Commissioner of Commercial
Taxes Department,
Chepauk, Chennai 5.

- 1 cc to G. Devi, Advocate, SR. 9262
- 1 c to The Spl. Govt. Pleader, (Taxes) SR. 9271
- 1cc to Mr. R. Saravana Kumar, Advocate, SR. 9292
- 3 cc to M/s. Muthumani Doraisami, SR. 9098
- 1 cc to Mr. G. Thangavel, Advocate, Sr. 9250
- 1 cc to Mr. V. Ravikumar, Advocate, SR. 9239
- 1 cc to Mr. R. Yashod Vardhan, Advocate, SR. 9494
- 1 cc to The Govt. Pleader, SR. 9581
- 1 cc to Mr. V. Vijayshankar, Advocate, SR. 9458

W.P.Nos.11296 to 11298/03
and 28787/04

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