

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-05-2015

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

AND

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.A.Nos.302,425 & 855 OF 2014

W.A.No.302/2014 :

- 1.P.Bhaskaran
- 2.M.S.Ilangovan
- 3.M.K.Sureshkumar
- 4.K.Nellaiyappan
- 5.A.Ravichandran

... Appellants in W.A.No.302 of 2014

-vs-

- 1.S.K.M.Sivakumaran

2.Government of Tamil Nadu,
rep.by its Principal Secretary to Government,
Home Transport (II) Department,
Fort St.George,
Chennai-600 009.

3.The Joint Transport Commissioner,
Ezhilagam, Chepauk,
Chennai-600 005.

4.Tamil Nadu Public Service Commission,
rep.by its Chairman, Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai-600 003.

5.D.Venkataraman,
Regional Transport Officer,
Office of the Regional Transport Office,
Ooty.

6.K.R.Krishnamurthy,
Motor Vehicle Inspector Grade-I,
Kangeyam Unit Office,
Tiruppur District.

7.K.Chandrasekaran,
Motor Vehicle Inspector Gr-I, (Enforcement Wing),
O/o Deputy Transport Commissioner,
Thirunelveli Zone,
Thirunelveli.

... Respondents in W.A.No.302/2014

W.A.No.425/2014 :

1.D.Venkataraman
2.K.R.Krishnamurthy ... Appellants

-vs-

1.S.K.M.Sivakumaran

2.Government of Tamil Nadu,
rep.by its Principal Secretary to Government,
Home Transport (II) Department,
Fort St.George,
Chennai-600 009.

3.The Joint Transport Commissioner,
Ezhilagam, Chepauk,
Chennai-600 005.

4.Tamil Nadu Public Service Commission,
rep.by its Chairman, Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai-600 003.

5.P.Bhaskaran

6.M.S.Ilangovan

7.M.K.Suresh Kumar

8.K.Nellaiyappan

9.A.Ravichandren

10.K.Chandrasekaran ... Respondents

(R5 to R9 impleaded as per Order
dated 18.7.2013 made in
MP.No.2/13 in W.P.15889/2013)

W.A.No.855/2014 :

1.Government of Tamil Nadu,
rep.by its Principal Secretary to Government,
Home Transport (II) Department,
Fort St.George,
Chennai-600 009.

2.The Joint Transport Commissioner,
Ezhilagam, Chepauk,
Chennai-600 005. ... Appellants

-vs-

1.S.K.M.Sivakumaran

2.Tamil Nadu Public Service Commission,
rep.by its Chairman, Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai-600 003.

3.D.Venkataraman
4.K.R.Krishnamurthy
5.P.Bhaskaran
6.M.S.Ilangovan
7.M.K.Suresh Kumar
8.K.Nellaiyappan
9.A.Ravichandren
10.K.Chandrasekaran ...

Respondents

(R5 to R9 impleaded as per order dated 18.7.2013 by DHPJ in MP.No.2 of 2013 in W.P.No.15889/2013)
(R 10 impleaded as per order dated 20.11.2013 by NKKJ made in M.P.No.3/2013 in W.P.15889/2013)

Appeals under Clause 15 of the Letters Patent against the order of the learned single Judge made in W.P.No.15889 of 2013, dated 19.02.2014.

W.P.No.15889/2013 :
filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 1st respondent bearing No.T1/56052/2006 (EO.No.360/2013) dated 07.08.2013 and to quash the same and consequently, direct the 1st and 2nd respondents to prepare a seniority list of eligible Motor Vehicle Inspector Gr-I based on the petitioner's seniority in Motor Vehicle Inspector Gr-II, by placing the petitioner above the direct recruits, respondents 4 & 5, and promote him as Deputy Transport Commissioner on that basis and till then not to make promotion to the post of Deputy Transport Commissioner.
(Prayer amended as per order of this Court dated 3.2.2014 and made in M.P.No.3/14.)

For appellant in W.A.No.302/2014 : Mr.M.Vijay Narayan,
Senior Counsel,
for Mr.A.Mohammed Ismail.

For appellant in W.A.No.425/2014 : Mr.R.Thiyagarajan,
Senior Counsel,
for M/s.Aiyer & Dolia.

For appellant in W.A.No.855/2014 : Mr.P.H.Arvinth Pandian,
Addl.Advocate General,
assisted by Mr.R.Rajeswaran,
Special Government Pleader.

For respondent 1 in all W.As.: Mr.N.G.R.Prasad,
for M/s.Row & Reddy.

For respondents 7 in W.A.No.302/2014 &
respondent 10 in W.A.Nos.425 & 855/2014 : Mr.K.Sridhar

Judgment reserved on : 27-03-2015

Judgment pronounced on : 28-05-2015

J U D G M E N T

V.Dhanapalan, J.

All these appeals have been filed against the order of the learned single Judge, dated 19.02.2014, made in W.P.No.15889 of 2013, allowing the case of the writ petitioner/first respondent herein, directing respondents 1 and 2/authorities therein to prepare a seniority list of eligible Motor Vehicle Inspector Grade-I and Grade II, by placing the writ petitioner above the direct recruits viz., respondents 4 and 5, and promote him as Deputy Transport Commissioner on that basis.

2. The Writ Petition was one, praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent/Principal Secretary to Government, Home Transport (II) Department, bearing No.T1/56052/2006 (EO.No.360/2013), dated 07.08.2013, and to quash the same and consequently, direct first and second respondents to prepare a seniority list of eligible Motor Vehicle Inspector Gr-I based on the petitioner's seniority in Motor Vehicle Inspector Gr-II, by placing the petitioner above the direct recruits, respondents 4 & 5, and promote him as Deputy Transport Commissioner on that basis and till then not to make promotion to the post of Deputy Transport Commissioner.

3. For the sake of convenience, the positions of the parties are referred to as in the writ petition.

4. The facts, which led to the filing of the Writ Petition, were as follows. :

4.1. Writ petitioner was appointed as Motor Vehicle Inspector (MVI) Gr-II by the proceedings, dated 15.12.1992, of the Transport Commissioner, on compassionate ground, since his father Mutharasappan died in harness. He joined duty on 28.12.1992. On 16.07.1993, a Government Order in G.O.Ms.No.165, Labour & Employment Department, was issued waiving passing of Tamil Nadu Public Service Commission examination for persons like writ petitioner, who were appointed on compassionate grounds and, hence, he was entitled to be regularised with effect from the date of his joining the service, as he was otherwise qualified.

4.2. After 16.07.1993, fourth respondent-D.Venkatraman and fifth respondent-K.R.Krishnamurthy were appointed as Motor Vehicle Inspectors Gr-II, by order dated 26.07.1993 and they joined duty only during September, 1993. As such, their date of appointment was subsequent to the date of appointment of the writ petitioner. Though there was administrative delay in issuing the order regularising the services of the petitioner in the post of MVI Gr-II, his services were regularised by order dated 25.03.1999 with

retrospective effect from 16.07.1993. Hence, he was senior to respondents 4 & 5.

4.3. Respondents 4 and 5 were promoted as MVI Gr-I on 12.03.1998, whereas the petitioner was promoted as MVI Gr-I only on 11.10.1999. On 03.08.2000, the petitioner's services as MVI Gr-I were regularised. In the order of regularisation dated 03.08.2000, though respondents 4 and 5 were shown above the petitioner, it was clearly mentioned that the seniority list of MVI Gr-I would be issued separately. But, the seniority list of MVI Gr-I was not issued. It was the further case of the petitioner that since he joined the service earlier to respondents 4 and 5 and his services were regularised with effect from 16.07.1993 i.e., earlier to the date of appointment of respondents 4 and 5, the petitioner's name should have been shown as senior to respondents 4 and 5. But, in the order of regularisation, the names of respondents 4 and 5 were shown above the name of the petitioner.

4.4. On 16.11.2006, the Transport Commissioner called for particulars from the first 15 eligible candidates for promotion to the post of Regional Transport Officer (RTO). Since the seniority list was not prepared, respondents 4 and 5 were among the first 15 to be called for. Hence, the petitioner herein filed a writ petition in W.P.No.20115/2007 before this Court seeking for a direction to respondents 1 and 2 to prepare a seniority list of MVI Gr-I and to place him above the respondents 4 and 5. Similarly, one Muthu, who was also appointed on compassionate ground as MVI Gr-II earlier to respondents 4 and 5, had filed a writ petition in W.P.No.18783/2007. Those two writ petitions were allowed on 03.01.2008 by a learned Single Judge of this Court by way of a common order. In the said common order, the learned Single Judge has directed the official respondents to prepare the seniority list taking into account the date of appointment of the petitioners therein as MVI Gr-II i.e, 16.07.1993.

4.5. As against the said common order of the learned Single Judge in W.P.Nos.20115 & 18783 of 2007, respondents 4 and 5 had preferred writ appeals in W.A.Nos.258 & 380 of 2008. In the writ appeals, a Division Bench of this Court set aside the order of the learned Single Judge and directed the official respondents to publish the seniority list of MVI Gr-I within three months. But, the seniority list was not prepared even thereafter. Hence, the petitioner made a representation on 18.05.2012 to the official respondents in that regard.

4.6. In the meanwhile, the petitioner was promoted as RTO on 01.12.2010. Unless the seniority list of MVI Gr-I in terms of G.O.156 Labour & Employment, dated 16.07.1993, was prepared, the petitioner's further promotion to the post of Deputy Transport Commissioner (in short 'DTC') would be affected. Hence, after sending a legal notice to the official respondents, the petitioner had filed the present writ petition to direct respondents 1 to 3 to prepare the seniority list of MVI Gr-I based on the

petitioner's seniority in Motor Vehicle Inspector Gr-II, by placing him above respondents 4 and 5, and to make promotion to Deputy Transport Commissioner on that basis and till then not to make promotion to the post of Deputy Transport Commissioner. On 07.08.2013, the first respondent, vide proceedings in No.T1/56052/2006 (EO.No.360/20013), had drawn the inter-se seniority lists for the posts of MVI Gr-II and MVI Gr-I, in which the petitioner was placed at Sl.No.69 in MVI Gr-II, and Sl.No.63 in MVI Gr-I, which was below the direct recruits. Hence, the Writ Petition.

5. Respondents 1 and 2 had filed a joint counter affidavit, stating as under :

5.1. Petitioner was appointed as MVI Gr-II on compassionate ground on 28.12.1992, subject to the condition that he should appear before Tamil Nadu Public Service Commission in the normal course and get himself regularly selected to the post of MVI Gr-II. The services of the petitioner were regularised with effect from 16.07.1993 i.e., from the date of issuance of Government Order viz., G.O.Ms.No.156, vide G.O.(2D).No.63, Home (Tr-II) Department, dated 25.03.1999. In the meanwhile, 39 new candidates were selected by the third respondent for the post of MVI Gr-II vide letter No.8227/Q1/87, dated 19.11.1992, and posting orders were issued to the selected candidates in the Transport Commissioner Office letter No.51041/T1/1988, dated 26.07.1993. Certain clarifications were sought for by the Transport Commissioner with regard to fixation of seniority of Motor Vehicle Inspectors, among the compassionate appointees and direct recruits.

5.2. Under the circumstances, the petitioner had filed an earlier writ petition in W.P.No.20115/2007 seeking to issue a writ of Certiorarified Mandamus to call for the entire records culminating in the issuance of letter No.64169/T2/2006, dated 16.11.2006, of Transport Commissioner's Office and to quash the same so far as it was against the petitioner. Similarly, one Muthu, who was appointed as MVI Gr-II on compassionate ground, had also filed a writ petition in W.P.No.18783/2007 on similar grounds. The said two writ petitions were allowed by the learned Single Judge of this Court vide common order dated 03.01.2008. Respondents 4 and 5, who were affected by the said common order passed by the learned Single Judge, had filed writ appeals in W.A.Nos.258 & 380 of 2008. In the writ appeals, the common order passed by the learned Single Judge was set aside by the Division Bench and the Transport Commissioner/second respondent was directed to publish the seniority list of MVI Gr-I within a period of three months.

5.3. In order to comply with the said order of the Court, for fixing the inter-se seniority among the compassionate appointees and direct recruits, the Transport Commissioner had addressed the Government with a request to clarify certain points relating to fixation of inter-se seniority between compassionate appointees

and direct recruits. The Government requested the TNPSC to send its views regarding the above matter. The TNPSC sent its views on fixation of seniority and the same were communicated to the Transport Commissioner vide Government letter No.49985/Home (Tr-IIA) Department/2013-1 dated 18.07.2013 to take further action.

5.4. Second respondent furnished the list of candidates by fixing inter-se seniority among MVI Gr-II vide proceedings No.T1/56052/2006 dated 07.08.2013. Even though the seniority of the petitioner was fixed with concurrence of TNPSC, the petitioner had not fulfilled the conditions prescribed for the post of Deputy Transport Commissioner for appointment by promotion from the cadre of Regional Transport Officer, as per Rule 3 of the Tamil Nadu Transport Service Rules. A candidate must possess the requisite qualification and experience in the feeder post to be eligible for promotion to the higher post. The petitioner was not eligible for the higher post i.e., Deputy Transport Commissioner, since he had not fulfilled the conditions. Accordingly, they prayed for dismissal of the writ petition.

6. The contention of the petitioner before the learned single Judge was that since his appointment was earlier to the appointment of respondents 4 and 5 and his service were regularised with effect from 16.07.1993, he should be placed above respondents 4 and 5, whereas in the impugned proceedings of the first respondent dated 07.08.2013, the name of the petitioner was placed at Sl.No.69 in MVI Gr-II, and at Sl.No.63 in MVI Gr-I, i.e., below the direct recruits.

7. The contention of the learned Additional Advocate General appearing for respondents 1 and 2 was that though the petitioner was appointed on 28.12.1992 on compassionate ground, the said appointment of the petitioner was subject to the condition that he should appear before the TNPSC in the normal course and get himself regularly selected; only by the order, dated 25.03.1999, the petitioner's services were regularised with retrospective effect from 16.07.1993 i.e., subsequent to the appointment of the direct recruits on 26.07.1993 and since the petitioner's services were regularised subsequent to the appointment of the direct recruits, he cannot be placed in the seniority list above the direct recruits.

8. The learned single Judge, after hearing the contentions of the parties, allowed the Writ Petition, directing respondents 1 and 2 to prepare a seniority list of eligible Motor Vehicle Inspectors Gr-I & II, by placing the petitioner above the direct recruits viz., respondents 4 and 5, and promote him as Deputy Transport Commissioner.

9. Learned Senior Counsel appearing for the appellants in these appeals would argue that the appointment of the first respondent was de hors the rules and hence his seniority has to be

have retrospective effect for the purpose of seniority but it has to be counted only for the purpose of increment and monetary benefits and, therefore, the first respondent cannot have a march over the appellants, in the matter of seniority. It is also the contention of the learned Senior Counsel that the seniority list was prepared as per the directives of this Court in W.A.No.380 of 2008 and in that view of the matter, it is not open for the first respondent to re-open the issue of fixation of inter-se seniority list, which has attained finality. Finally, the learned Senior Counsel would submit that the promotion orders issued to the appellants as Motor Vehicles Inspectors Grade-I during the year 1998 were not challenged by the first respondent at any point of time and, as such, the relief sought for by the first respondent for placing him over and above the appellants is not maintainable. In support of their contentions, the learned Senior Counsel relied upon the following authorities :

1. G.Ramachandran v. Government of Tamil Nadu, 1986 WLR 183 :

"5. So far as the argument that the reservation should be carried forward is concerned, it has to be pointed out that there is no recruitment Rule requiring such a reservation to be carried forward for the succeeding years. The emphasis which is now sought to be placed on the terminology used, that is, 'reserved to be filled in by recruitment by transfer' is not of much assistance, because in the absence of any specific rule requiring the vacancies to be carried forward, the reservation referred to in Explanation 2 must be read as referring to reservation only for that particular year. It will therefore lapse after the year has ended in the absence of any recruitment rule requiring the reserved vacancies to be carried forward. There is also no substance in the argument that since Raju's appointment as Supervisor has been related back to 17th December 1965, he should now be considered for promotion on that footing in preference to respondents 3 to 10 who have already been promoted. It is difficult to see how an order of regularisation of a temporary appointment can affect promotions of candidates made in accordance with the recruitment rule - where certain persons are promoted in accordance with recruitment rules, rights vesting these promotees to hold the post of promotion. This right cannot be taken away by an administrative order relating back the regularisation of a temporary appointee to any earlier date. Such regularisation cannot have the effect of automatically adversely affecting the

promotions which have already been made in accordance with the relevant recruitment rules. There is thus no substance in these appeals and they are accordingly dismissed. There will be no order as to costs in both the appeals.

2. P.Perumal v. A.V.Sureshbabu, 2007 (4) M.L.J., 160 :

"It is a well established principle of law that the candidates appointed under Rule 10 (a) (i) (1) of the Service Rules are not entitled to count their temporary service for seniority. Such service is available either for earning increments or for commencement of probation only and not for counting their seniority from a retrospective date."

3. Santosh Kumar Dubey v. State of U.P., (2009) 6 SCC 481 :

"11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in government service."

4. P.Mariyappan v. Government of Tamil Nadu, 1985 WLR 74 :

"9. Undoubtedly rules under Article 309 of the Constitution of India can be made with retrospective effect. Making the rules retrospective in operation and making appointments in accordance with such rules are

two different things. The power to make rules is a legislative power and, therefore, can be exercised retrospectively. When in the light of such rules some appointments are being made with retrospective effect, it is purely an administrative act and such an administrative act, if it prejudicially affects vested rights of other Government employees then to that extent such administrative act will become unfair and arbitrary. It is this that has happened in the present case. When the rules were given retrospective effect and a proviso was introduced to the effect that the qualification of possessing a degree with statistics, mathematics and economics shall not be insisted upon in the case of Supervisors and Junior Assistants who entered service in the Department of Statistics prior to 15.11.68, that did not have the effect of enabling the State Government to make appointments retrospectively to the prejudice of those who were already appointed in clear vacancies through the Public Service Commission.

5. K. Madalaimuthu v. State of T.N., (2006) 6 SCC 558 :

"10. (a) (i) (1). Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules:

Provided that no appointment by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Tamil Nadu Public Service Commission."

25. In the instant case, the authorities on the strength of the several government orders giving retrospective effect to the regularisation of the promotees, have taken the date of initial appointment of such promotees as the starting point of their seniority. In our view, such a course of action was erroneous and contrary to the well-established principles relating to determination of seniority. In our view, the High Court took an erroneous view in

the matter in applying Rule 4 of the General Rules and holding that the period during which the promotees had initially discharged the duties of District Registrars, though appointed temporarily under Rule 10(a)(i)(1), was to be counted for determining their seniority. The decision of this Court in L. Chandrakishore Singh relied on by Shri Venkataramani did not involve the question of persons appointed outside the service as a stop-gap arrangement. The fact situation of the said decision is different from the fact situation of the instant case which finds support from the decisions cited by Mr Rao.

26. We, therefore, set aside the order passed by the High Court and direct the respondents concerned to redetermine the seniority of the appellants in relation to the promotees after reckoning the starting point of seniority of such promotees from the date on which their services were regularised and not from the date of their initial appointment under Rule 10(a)(i)(1) of the General Rules."

10. Conversely, the contention of the learned counsel for the contesting first respondent / compassionate appointee is that the first respondent was appointed on compassionate grounds as per rules in a regular vacancy and, he having joined the duty prior to the appellants, his seniority ranks first; therefore, the learned single Judge, after analysing the entire case, ordered his seniority correctly and, as such, the impugned order cannot be interfered with. The learned counsel would cite the following authorities :

1. Thiru A. Balakrishnan v. Govt. of T.N., 1995 Supp (4) SCC 108 :

"4. It is thus obvious that in Paripoornam case the order of regularisation itself denied the benefit towards the seniority of the period of service rendered prior to the date of regularisation. There is no such condition in the order of regularisation of the appellants in the present case. Mr Chidambaram, however, contends that since the seniority was initially fixed by the department ignoring the temporary period, the condition should be impliedly read in the appointment order. We do not agree with Mr Chidambaram. In the absence of any specific order denying seniority to the appellant from the date of their initial appointment – from which date they were regularised – they are entitled to count the whole of the period of service for the purpose of seniority."

"38. The challenge appears to us to be belated and in this regard we would endorse the same view as expressed by this Court in L. Chandrakishore Singh v. State of Manipur which is extracted hereinbelow: (SCC p. 303, para 15)

"15. It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in G.P. Doval v. Govt. of U.P."

39. The respondents have, in support of their case, referred to and relied upon the judgment of this Court in K. Madalaimuthu v. State of T.N. In order to appreciate the contention raised by the counsel appearing for the respondents, we have carefully perused the said decision. However, on a careful scrutiny of the said judgment, we are of the considered opinion that the said decision is distinguishable on facts which are noted hereinbelow.

40. The aforesaid decision was rendered in a fact situation which is altogether different from the present one and this would be apparent on a bare perusal of the said decision. In K. Madalaimuthu case the recruitment of the respondents therein was admittedly dehors the relevant recruitment rules inasmuch as the said recruitment was particularly made under Rule 10(a)(i)(1) of the Tamil Nadu State and Subordinate Services Rules, 1955. The said provision is extracted hereinbelow for a proper appreciation of the situation:

"10(a)(i)(1). Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the

said Rules."

(emphasis supplied)

41. It is clear from the judgment in K. Madalaimuthu case that the respondents therein had been appointed under Rule 10(a)(i)(1) which provides for recruitments in emergent circumstances and allows the appointing authority to make appointments otherwise than in accordance with the said Rules. It was in this context that this Court held that the respondents therein will get benefit of their seniority only from the date they were regularised in the cadre to which they had been appointed.

42. In the case at hand, however, the fact situation is totally different on account of the fact that the appointment letters issued to the appellants appointing them on temporary and ad hoc basis as Assistant Engineers in the Public Works Department specifically mentioned that the appellants will be governed by the Service Rules and also that they would be regularised according to the Rules on the recommendation of a Selection Board constituted by the Government. We would like to extract both the aforesaid conditions formulating part of the terms and conditions contained in the appointment letters issued to the appellants:

"3. This appointment will be on purely temporary and ad hoc basis until regular appointments are made according to the Rules on the recommendation of a Selection Board constituted by the Government. No increment in time scale will be permissible till their appointment is regularised. This ad hoc appointment as Assistant Engineer will not entitle any seniority in the cadre of regular Assistant Engineer.

8. His appointment will be governed by the relevant Rules and Orders of the Government issued from time to time."

43. In that view of the matter there was not only a case of the appellants having a legitimate expectation that their cases would be considered for regularisation by the competent authority but also a case where the Service Rules were also made applicable to the appellants. When the Arunachal Pradesh Public Service Commission ("A.P. PSC") considered the cases of the appellants for regularisation on completion of their probationary period of two years, all the said factors weighed in the case A.P.PSC and consequently it was decided to regularise them from the date of their initial

appointment. Therefore, in the facts of the present case, the ratio laid down in L. Chandrakishore Singh would be squarely applicable.

44. We may here also appropriately refer to another decision of this Court in G.P. Doval v. Govt. of U.P. wherein this Court held that regularisation of the services of a person, whose initial appointment although not in accordance with the prescribed procedure but later on approved by an authority having power and jurisdiction to do so would always relate back to the dates of their initial appointment. Para 13 is reproduced hereinbelow :

"13. ... If the first appointment is made by not following the prescribed procedure but later on the appointee is approved making his appointment regular, it is obvious commonsense that in the absence of a contrary rule, the approval which means confirmation by the authority which had the authority, power and jurisdiction to make appointment or recommend for appointment, will relate back to the date on which first appointment is made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. That has not been done in this case."

45. We may also usefully refer to the judgment of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra which reads as follows: (SCC pp. 744-45, para 47)

"47. To sum up, we hold that:

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

3. Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 :

"45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

4. H.Nagarajan v. State of Tamil Nadu, W.P.No.21654 of 2004, dated 03.04.2006 - High Court of Madras (DB) :

"14. For the aforesaid reason, the Writ Petition Nos.3822 and 3823 of 2006 filed by the Government, are dismissed. Writ Petition No.21654 of 2004 is partly allowed, and it is directed that the candidates selected by the TNPSC on the basis of the examination held in November, 1983, shall rank above General Rules 10(a)(i) candidates; but, so far as compassionate appointees are concerned, the inter se rank of the compassionate appointees and TNPSC candidates shall depend according to the date of their initial appointment."

11. We have heard the learned counsel for the parties and also gone through the records, as well as the citations relied upon.

12. In order to deal with the contentions raised by the learned Senior Counsel for the appellants, it is a sine qua non to refer to some statutory provisions. The said provisions are Rules 10 a (i) (1), 35 (aa) and 48 of the Tamil Nadu State and Subordinate Service Rules, in short, "the Rules", and also Article 309 of the Constitution of India, which read as under :

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12.1. Rule 10. Temporary appointments :- a (i) (1) -

"Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules."

12.2. Rule 35 (aa) :

"Rule 35 (aa) - The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the service, class, category or grade."

12.3. Rule 48 :

"Rule 48. -Notwithstanding anything contained in these rules or in the special rules, the Governor shall have power to deal with the case of any person or class of persons serving in a civil capacity under the Government of Tamil Nadu or of any person who has or of any class of persons who have served as aforesaid or any candidate or class of persons for appointment to a service in such manner as may appear to him to be just and equitable: नियमेव जयते

Provided that, where any such rule is applicable to the case of any person or class of persons, the case shall not be dealt with in any manner less favourable to him or them than that provided by that rule."

13. Keeping the above statutory provisions in mind, if we look at the first contention of the learned Senior Counsel for the appellants that the appointment of the first respondent was dehors the rules and hence his seniority has to be counted only from the date on which his services were regularised i.e., with effect from 25.03.1999, and the regularisation cannot have retrospective effect for the purpose of seniority but it has to be counted only for the purpose of increment and monetary benefits and, therefore, the first respondent cannot have a march over the appellants in the matter of seniority, it has to be stated that the writ

petitioner was appointed as Motor Vehicle Inspector (MVI) Gr-II by the proceedings, dated 15.12.1992, of the Transport Commissioner, on compassionate ground, following the death of his father, subject to the condition that he should apply to the Tamil Nadu Public Service Commission in the normal course and get selected for regular appointment in the post. He joined duty on 28.12.1992. However, on 16.07.1993, a Government Order in G.O.Ms.No.156, Labour & Employment, was issued waiving passing of Tamil Nadu Public Service Commission examination for persons like the writ petitioner, who were appointed on compassionate grounds. Pursuant thereto, by an order, dated 26.07.1993, respondents 4 and 5, namely, D.Venkatraman and K.R.Krishnamurthy in the writ petition, were appointed as Motor Vehicle Inspectors Gr-II and they joined duty only during September, 1993. Subsequently, they were promoted as MVI Gr-I on 12.03.1998, whereas the writ petitioner was promoted as MVI Gr-I only on 11.10.1999. On 03.08.2000, the petitioner's services as MVI Gr-I were regularised. In the said order of regularisation, though respondents 4 and 5 were shown above the petitioner, it was clearly mentioned that the seniority list of MVI Gr-I would be issued separately, but the same was not issued.

14. On 16.11.2006, the Transport Commissioner called for particulars from the first 15 eligible candidates for promotion to the post of Regional Transport Officer (RTO). Since the seniority list was not prepared, respondents 4 and 5 were among the first 15 to be called for. Hence, the petitioner filed a writ petition in W.P.No.20115/2007 before this Court seeking for a direction to respondents 1 and 2 to prepare a seniority list of MVI Gr-I and to place him above respondents 4 and 5. Similarly, one Muthu, who was also appointed on compassionate ground as MVI Gr-II earlier to respondents 4 and 5, had filed a writ petition in W.P.No.18783/2007. Those two writ petitions were allowed on 03.01.2008 by a learned Single Judge of this Court by way of a common order. In the said common order, the learned Single Judge directed the official respondents to prepare the seniority list, taking into account the date of appointment of the petitioners therein as MVI Gr-II i.e., 16.07.1993. As against the said common order of the learned Single Judge in W.P.Nos.20115 & 18783 of 2007, respondents 4 and 5 preferred writ appeals in W.A.Nos.258 & 380 of 2008. In the said writ appeals, on 08.09.2010, a Division Bench of this Court set aside the order of the learned Single Judge, directing the official respondents to publish the seniority list of MVI Gr-I within three months. But, the seniority list was not prepared even thereafter. Hence, the writ petitioner made a representation on 18.05.2012 to the official respondents in that regard.

15. In the meanwhile, the writ petitioner was promoted as Regional Transport Officer on 01.12.2010. According to the writ petitioner, if the seniority list of MVI Gr-I in terms of G.O.156 Labour & Employment, dated 16.07.1993, was not prepared, his further promotion to the post of Deputy Transport Commissioner would be affected. As such, after sending a legal notice to the official respondents on 08.05.2013, the petitioner had filed the

present writ petition, namely, W.P.No.15889 of 2013, to direct respondents 1 to 3 to prepare the seniority list of MVI Gr-I based on the petitioner's seniority in Motor Vehicle Inspector Gr-II, by placing him above respondents 4 and 5, and to make promotion to Deputy Transport Commissioner on that basis and till then not to make promotion to the post of Deputy Transport Commissioner. On 07.08.2013, the first respondent, vide proceedings in No.T1/56052/2006 (EO.No.360/20013), had drawn the inter-se seniority lists for the posts of MVI Gr-II and MVI Gr-I, in which the writ petitioner was placed at Sl.No.69 in MVI Gr-II, and Sl.No.63 in MVI Gr-I, which was below the direct recruits. Following that, the prayer in the Writ Petition was amended to quash the said proceedings as well.

16. In the above background, let us now test whether the appointment of the writ petitioner was in accordance with rules ? and, if so, when his seniority counts from ?

17. Firstly, Rule 10 a (i) (1) of the Rules deals with temporary appointments, as per which, where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules.

18. Secondly, as per Rule 48, the Governor has power to deal with the case of any person or class of persons serving in a civil capacity under the Government of Tamil Nadu or of any person who has or of any class of persons who have served as aforesaid or any candidate or class of persons for appointment to a service in such manner as may appear to him to be just and equitable.

19. Thirdly, in the Government Order in G.O.Ms.No.1119, Labour and Employment Department, dated 20.05.1981, it had been ordered that the dependant of a deceased Government servant with technical or professional qualification be appointed temporarily to the initial or starting category of a post for which his qualification is the minimum prescribed in the service rules. It was also ordered therein that such appointment would only be on a temporary basis and such candidates will have to apply to the Tamil Nadu Public Service Commission subsequently in the normal channel and get themselves selected for regular appointment in the post. The inherent risk in this procedure was the possibility of non-selection of the dependant by the Tamil Nadu Public Service Commission in the normal channel. He/she would then lose the job, thereby defeating the very purpose for which the scheme was formulated. It would also run counter to the Government instruction that persons appointed under compassionate ground should not be ousted. Once the Government recognised the need to provide employment consistent with the qualifications possessed by the candidate, it did not seem fair to put one class of persons alone in jeopardy merely because they get appointment as

Engineers, Civil Assistant Surgeons etc., on account of higher qualification possessed by them. Therefore, the Government had re-examined the existing procedure and addressed the Tamil Nadu Public Service Commission for its views. The Tamil Nadu Public Service Commission had, in its letter No.1089/E4/98, dated 22.05.1992, agreed to dispense with the distinction mentioned above.

20. The Government, therefore, directed that the orders issued in G.O.Ms.No.1119, Labour and Employment Department, dated 20.05.1981, which were subsequently issued in G.O.Ms.No.23, Labour and Employment Department, dated 10.02.1993, be partially modified to the effect that in the matter of appointment on compassionate grounds, the distinction made in respect of technically or professionally qualified candidates, be dispensed with. The Government further directed that the dependants of deceased Government servants who are technically or professionally qualified be appointed by the appointing authorities concerned in the lowest category of post for which his/her qualification is the minimum prescribed in the relevant service rules for direct recruitment, temporarily in the first instance, provided there are vacancies and the condition prescribed for appointment on compassionate grounds are satisfied, and, thereafter, their services will be regularised with effect from the date of appointment after obtaining the concurrence of the Tamil Nadu Public Service Commission under latter part of Regulation 16 (b) of the Tamil Nadu Public Service Commission Regulations, 1954.

21. Fourthly, G.O.Ms.No.156, Labour and Employment Department, dated 16.07.1993, was issued by the Government, stating in paragraph (4) that in cases of dependants of technically and professionally qualified who have already been appointed subject to the condition that they will have to get themselves selected by the Tamil Nadu Public Service Commission in the normal course, their service may be regularised with effect from the date of issue of the said G.O., after obtaining the concurrence of the Tamil Nadu Public Service Commission.

22. Therefore, the above statutory provisions, namely, Rules 10 a (i) (1) and 48 would empower the executive/appointing authority to appoint persons on compassionate grounds in regular vacancies. Further, as there was inherent risk in the process in the event of non-selection of the dependant by the Tamil Nadu Public Service Commission in the normal channel, which would cause loss of job and defeat the very purpose of the scheme, and also as the same would run counter to the Government instructions, in order to not to cause embarrassment to such compassionate appointees, the Government has come out with G.O.Ms.No.156, dated 16.07.1993, directing that the dependants of deceased Government servants, who are technically or professionally qualified, be appointed by the appointing authorities concerned in the lowest category of post for which his/her qualification is the minimum prescribed in the relevant service rules for direct recruitment, temporarily in the first instance, provided there are vacancies and the condition prescribed for appointment on compassionate

grounds are satisfied, and, thereafter, their services will be regularised with effect from the date of appointment after obtaining the concurrence of the Tamil Nadu Public Service Commission under latter part of Regulation 16 (b) of the Tamil Nadu Public Service Commission Regulations, 1954, thereby also waiving the passing of Tamil Nadu Public Service Commission examination for persons like the writ petitioner, who were appointed on compassionate ground. Following the said G.O.No.156, the Transport Commissioner forwarded a proposal to the Government for issue of order of the Government for the regular appointment of the writ petitioner. Thereafter, the Tamil Nadu Public Service Commission was consulted for concurrence for the regular appointment of the writ petitioner, namely, S.K.M.Sivakumaran. Pursuant thereto, the Commission, has accorded its concurrence under the later part of Regulation 16 (b) of its Regulations for regular appointment of the writ petitioner as Motor Vehicle Inspector, Grade-II, with effect from 16.07.1993, subject to the condition that he should be physically fit for the post. The Government, after examining the proposal of the Transport Commissioner and carefully taking into consideration the views of the Commission, issued G.O.(2D) No.63, Home (Transport-II) Department, dated 25.03.1999, appointing writ petitioner-S.K.M.Sivakumaran as Motor Vehicle Inspector Grade-II on compassionate grounds on regular basis with effect from 16.07.1993. The said Government Order, in the absence of any challenge, has become final. Were respondents 4 and 5 really aggrieved, nothing prevented them from challenging the said Government Order.

23. In this regard, Rule 35 (aa), which is a crucial provision for fixation of seniority in a service, class, category or grade, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, would come into play. According to the said rule, the seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the service, class, category or grade.

24. In the case on hand, the writ petitioner was neither reduced to a lower rank as a punishment nor were there any criminal/disciplinary proceedings pending against him. Therefore, definitely, his seniority had to be fixed with reference to the date on which he was appointed to the service, which was 28.12.1992. It may be true, respondents 4 and 5 were promoted to Grade-I on 12.03.1998 whereas the writ petitioner was promoted on 11.10.1999, though he was appointed prior to the said respondents. It all happened due to no fault of the writ petitioner, but for the lackadaisical attitude of the authorities. Were the authorities diligent enough in the discharge of their duties, the order of regularisation of the writ petitioner would have been issued immediately after G.O.Ms.No.156, dated 16.07.1993, or after

some reasonable time thereafter for obtaining the views and concurrence of the Tamil Nadu Public Service Commission, in which event, the writ petitioner would have been promoted to Grade-I earlier to respondents 4 and 5 and there could not have been the issue of the writ petitioner not fulfilling the conditions of Rule 3 of Tamil Nadu Transport Service Rules. The authorities took six long years to give the benefit of the said G.O. to the writ petitioner, though the same was given retrospective effect. Such huge delay on the part of the authorities cannot be attributed to the writ petitioner and cannot be taken advantage of by respondents 4 and 5 to claim seniority. That apart, none of the provisions discussed above would indicate that the seniority of such appointees would count from the date on which their services were regularised and that such seniority has to be counted only for the purpose of increment and monetary benefits. As held by the Supreme Court in *L. Chandrakishore Singh v. State of Manipur*, 1999 (8) SCC 287, which is subsequently referred to by the very same Court in *S. Sumnyan v. Limi Niri*, (2010) 6 SCC 791, even in cases of probation or officiating appointments which are followed by a confirmation, unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Further, where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. The same view was earlier held by the Apex Court in *G.P. Doval v. Govt. of U.P.*, 1984 (4) SCC 329. It is also not out place to mention hereat that in Sumnyan's case, cited supra, the ratio laid down in *L.Chandrakishore Singh's* case, referred to above, was distinguished for the reasons that in Sumnyan case, the appointments in question were purely ad hoc and the appointment orders issued therein were subject to the terms and conditions, which include the one that the said ad hoc appointment would not entitle any seniority in the regular cadre and hence the ratio decidendi in *L.Chandrakishore Singh's* case was not made applicable to Sumnyan's case. However, in the case on hand, the appointment of the writ petitioner is governed by the relevant Rules and orders of the Government issued from time to time, as stated above. As such, the contention in this regard that the appointment of the first respondent was de hors the rules and hence his seniority has to be counted only from the date on which his services were regularised i.e., with effect from 25.03.1999, and the regularisation cannot have retrospective effect for the purpose of seniority but it has to be counted only for the purpose of increment and monetary benefits and, therefore, the first respondent cannot have a march over the appellants in the matter of seniority, cannot be acceded to.

that view of the matter it is not open for the first respondent to re-open the issue of fixation of inter-se seniority list, it is to be stated that in the said appeals, this Court directed the authorities to finalise the seniority list as per rules, but did not give any positive direction in favour of respondents 4 and 5. Moreover, the said list of seniority was not final, as the same was open to judicial review, particularly when the same was challenged by the writ petitioner in the writ petition and having been set aside by the learned single Judge.

26. On the last contention of the learned Senior Counsel for the appellants that the promotion orders issued to the appellants as Motor Vehicles Inspector Grade-I during the year 1998 were not challenged by the first respondent at any point of time and as such the relief sought for by the first respondent for placing him over and above the appellants is not maintainable, it has to be stated, the writ petitioner, in the absence of the order dated 25.03.1999, was virtually handicapped to challenge the promotion orders of the appellants, which cannot be a factor to be reckoned with. Now that he is armed with the order dated 25.03.1999, the writ petitioner has challenged the seniority fixed by the authorities on the appellants. If the said contention is accepted as true, the question that remains unanswered from the appellants is, why did they not challenge the very G.O.Ms.No.156, dated 16.07.1993, or the subsequent G.O.(2D) No.63, Home (Transport-II) Department, dated 25.03.1999, appointing the writ petitioner/first respondent as Motor Vehicle Inspector Grade-II on compassionate grounds on regular basis with effect from 16.07.1993 ? Therefore, it has to be concluded, in this case, that the compassionate appointment of the writ petitioner was a method of recruitment as per rules, as he was otherwise qualified.

27. Adverting to the authorities relied upon by the learned Senior Counsel for the appellants, it is to be said that the said decisions were the cases wherein the individuals were appointed either on consolidated basis, daily wages, ad hoc basis, or as a stop gap arrangement, and disciplinary proceedings were pending against the individuals or where the individuals claimed monetary benefit from the date when the posts fell vacant as against the date of joining. More importantly, all the said authorities are sub silentio for Rule 35 (aa). In other words, in none of the said decisions, Rule 35 (aa) was either referred to, or relied upon, or dealt with. Were the said rule in focus of the cases, the obiter dicta and the ratio decidendi made therein, in our firm belief, would not have been so. Therefore, the said decisions are not helpful to the appellants.

28. For all the above reasons and in view of the clear statutory provisions as to the appointments by more than one method and also fixation of seniority thereof, all the contentions of the learned Senior Counsel for the appellants collapse and, as such, we do not find any reason to interfere with the order of the learned single Judge.

29. At this point, we feel it appropriate to say that the factors of long delay in the regularisation process and the issuance of Government Order in G.O.(2D) No.63, dated 25.03.1999, giving retrospective effect to the first respondent/writ petitioner, so also the two promotions effected to the appellants, cannot be lost sight of. Therefore, the said factors have to be taken into consideration by the respondent authorities, while fixing the inter se seniority among the candidates, and sufficient safeguards have also to be accorded to them, due to the delay caused by the authorities.

30. With the above observation, these Writ Appeals are disposed of. No costs. Consequently, the connected M.P.Nos.1 of 2014 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.Principal Secretary to Government,
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- 2.The Joint Transport Commissioner,
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1 cc to Mr. A.Mohamed Ismail, Advocate, SR.No.25538

W.A.Nos.302,425 & 855/2014

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