

K. DHEENADHAYALAN

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v.

STATE OF TAMIL NADU AND ANR.

April 22, 1980

[R. S. SARKARIA AND R. S. PATHAK, JJ.]

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*Seniority List—Fresh Inter-se seniority list drawn as per the principles indicated by the High Court and according to the special Rules for Tamil Nadu Commercial Taxes Service—Petitioner not a party before the High Court's proceedings—Whether directions would bind the petitioner—The power of the High Court to fill up the lacuna in an order assailed.*

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Under the Special Rules of the Tamil Nadu Commercial Taxes Service, recruitment to the junior most post, Joint Commercial Tax Officer is made by direct recruitment and recruitment by transfer from Deputy Commercial Tax Officers in the State Commercial Taxes Subordinate Services in the proportion 1 : 2. The higher posts are filled by promotion from officers in the category of posts immediately below. Under Rule 2(b) all promotions are to be made on the grounds of merit and ability, seniority being considered where merit and ability are equal. Rule 5(c) provides that every person appointed as a Joint Commercial Tax Officer must be on probation for at least two years on duty; in the case of direct recruitment the probationary period commences from the date on which the officer completes his training and; in the case of recruitment by transfer it commences from the date the officer joins duty. Under rule 7(b), the period of training of a direct recruit does not count towards probation.

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The petitioner was recruited to the Cadre of Joint Commercial Tax Officer as a direct recruit in 1966 and was posted for training which he joined on 6th June 1966; he commenced his period of probation on 18th August 1967. On 16th August 1972, the petitioner was promoted to the post of Commercial Tax Officer and on 14th January 1976 he was promoted as Assistant Commissioner. The second respondent joined the post of Joint Commercial Tax Officer as a promotee on 25th January 1967 and commenced his probation from that date. He was promoted as Commercial Tax Officer on 17th December 1972 and as Assistant Commissioner on 26th August 1976.

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In the combined inter-se seniority list issued in G.O.Ms. No. 4103 dated 9th July 1973, herein the petitioner and the second respondent were shown in the 1966 list at serial numbers 43 and 52 respectively. The validity of the combined inter-se seniority list was challenged in two writ petitions Nos. 2016 and 2017 of 1972 filed by certain other officers in respect of the ranking from serial numbers 51 to serial number 78. The petitioner was not a party to the writ petition. The writ petition was allowed by the Madras High Court. The High Court took note of the fact that no rules had been framed indicating how the inter-se seniority between the direct recruits and the transferee recruits had to be fixed and therefore directed a fresh determination of the inter-se seniority on the basis of three principles: (i) Each year should be taken as a unit for fixing the inter-se seniority; (ii) Persons not actually appointed in the year 1966 should not be included in the 1966 year's list

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- A and their seniority should be determined with reference to the date of their joining as Joint Commercial Tax Officers; and (iii) The date on which an officer commences probation is the proper criterion for fixing the inter-se seniority.

B In the new combined inter-se seniority list, so prepared and issued by the Government in their order No. G.O. Ms. No. 2228 dated 27th December 1977, both the second respondent and the petitioner were shown at serial number 48 and serial No. 49 respectively in the 1967 List. The petitioner, apprehending that the seniority assigned to him in the second combined inter-se seniority list of Joint Commercial Tax Officers would prejudice him in the promotions to be made to the category of Deputy Commissioners has challenged the validity of that seniority list.

C Dismissing the petition, the Court

HELD : 1. Where the rules are specifically silent there is no doubt that the Government is entitled to make an order filling up any lacuna or uncovered gap in the rules. There is good reason in the principle followed in this case that seniority should be based on the length of effective service. The date of confirmation in a post then loses its relevance. [781 F-G]

D 2. The principle that officers whose effective entry into the service pertains to a particular year should be regarded as a unit in themselves for fixing their inter-se seniority is valid. Correctly, therefore, the petitioner and the second respondent have been placed in the 1967 List. Since the Special Rules do not contemplate any credit being given for the period of training undergone by a direct recruit and the probationary period commences only when the training ends, the year of appointment is of little moment. [781 B-C, D-E]

E 3. The principles propounded by the High Court are principles of general application and drawn from the rules governing the service and the concepts implied therein. They are not principles applicable peculiarly only to the parties to the writ petitions. They are principles which could legitimately form the basis of a combined inter se seniority list in respect of Joint Commercial Tax Officers. The places assigned to the petitioner and the second respondent duly represent their relative seniority. The second seniority list was prepared after issuing notice to all including the petitioner and prepared after considering objections raised. [782 A-C]

ORIGINAL JURISDICTION : Writ Petition No. 461 of 1979.

(Under Article 32 of the Constitution)

G Dr. Y. S. Chitale, R. Mohan, P. N. Ramalingam and A. T. M. Sampath for the Petitioner.

A. V. Rangam for the Respondent.

The Judgment of the Court was delivered by

H PATHAK, J.—The Tamil Nadu Commercial Taxes Service consists of a hierarchy of posts. At the base lies the post of Joint Commercial Tax Officer, above it is the post of Commercial Tax Officer, then of Assistant-Commissioner, thereafter of Deputy Commissioner and

finally there is the post of Selection Grade Deputy Commissioner. The service is governed by the Special Rules for the Tamil Nadu Commercial Taxes Service (the "Special Rules"). Recruitment to the junior most post, the Joint Commercial Tax Officer, is made by (i) direct recruitment and (ii) recruitment by transfer from Deputy Commercial Tax Officers in the State Commercial Taxes Subordinate Service. Permanent vacancies in the posts of Joint Commercial Tax Officer are filled by direct recruitment and by "transfer" recruitment in the proportion 1 : 2. The higher posts are filled by promotion from officers in the category of posts immediately below. Under rule 2(b) of the Special Rules all promotions are to be made on the grounds of merit and ability, seniority being considered only where merit and ability are equal. Rule 5(c) provides that every person appointed as a Joint Commercial Tax Officer must be on probation for at least two years on duty; in the case of direct recruitment the probationary period commences from the date on which the Officer completes his training, and in the case of recruitment by transfer it commences from the date the officer joins duty. Under rule 7(b) the period of training of a direct recruit does not count towards probation.

The petitioner was recruited to the cadre of Joint Commercial Tax Officers as a direct recruit in 1966, and was posted for training which he joined on 6th June, 1966; thereafter he completed the probationary period of two years. On 16th August, 1972 the petitioner was promoted to the post of Commercial Tax Officer. The second respondent was promoted as Commercial Tax Officer on 17th December, 1972.

Promotion to the next higher category of posts, the Assistant Commissioners, followed. The petitioner was promoted as Assistant Commissioner on 14th January, 1976 while the second respondent was promoted on 26th August, 1976.

Meanwhile, by G. O. Ms. No. 4103 dated 9th July, 1973 the Government passed an order notifying the combined inter-se seniority list of directly recruited Joint Commercial Tax Officers during the years 1964 to 1967 and the transferee Joint Commercial Tax Officers recruited during the years 1964 and 1966 on the basis of the principles set forth in that order. The seniority list reflected the cyclical order based on rule 2(c) of the Special Rules, that is to say, (i) direct recruit (ii) transferee recruit (iii) transferee recruit. The petitioner was shown in the "1966 list" at serial No. 43 of the overall seniority list and 18th August, 1967 was shown as the date of commencement of his probation. The second respondent was also shown in the 1966 list, at serial No. 52 with 25th January, 1967 as the date of commencement of his probation.

**A** The validity of the combined inter-se seniority list was challenged by two writ petitions, Writ Petitions Nos. 2016 and 2017 of 1972 filed by certain other officers in respect of the ranking from serial number 51 to serial Number 78. The petitioner was not a party to the writ petitions. The writ petitions were allowed by the Madras High Court by its judgment dated 16th September, 1975. The High Court took note of the fact that no rules had been framed indicating how the inter-se seniority between the direct recruits and the transferee recruits had to be fixed. The High Court quashed the seniority list and directed a fresh determination of the inter-se seniority on the basis of three principles :

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1. Each year should be taken as a unit for fixing the inter-se seniority.
  2. Persons not actually appointed in the year 1966 should not be included in the 1966 year's list and their seniority should be determined with reference to the date of their joining as Joint Commercial Tax Officers; and
  3. The date on which an officer commences probation is the proper criterion for fixing the inter-se seniority.
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**E** Taking those principles into account, the Government then prepared a fresh combined inter-se seniority list and published it by an order set forth in G.O. No. 2228 dated 27th December, 1977. The second respondent was now shown at serial number 48 and the petitioner was shown at serial number 49 in the 1967 list.

**F** The petitioner, apprehensive that the seniority assigned to him in the second combined inter-se seniority list of Joint Commercial Tax Officers would prejudice him in the promotions to be made to the category of Deputy Commissioners, has challenged the validity of that seniority list.

**G** The petitioner contends that the High Court has no power to lay down the principles for determining inter-se seniority between direct recruits and transferee recruits and, in any event, his seniority cannot be determined on the basis of the principles laid down by the High Court inasmuch as he was not a party to the writ petitions. The petitioner also takes exception to the statement contained in paragraph 16 of the State Government's counter affidavit to the effect that the seniority of a Government Officer in the lower category is also the basis for assigning seniority in the higher category. Great emphasis has been laid by the petitioner on the circumstance that he joined as Joint Commercial Tax Officer earlier than the second respondent.

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In our opinion, the principles which the High Court culled out as the basis for determining the inter-se seniority of Joint Commercial Tax Officers are in the main drawn from the rules governing the service. The petitioner cannot claim that for the purpose of seniority his service must be considered with reference to the date on which he commenced the period of training. The special Rules require that a direct recruit must undergo a period of training. They also provide that he must pass through a period of probation. They further declare that the period of training will not count as a period spent on probation and that the probationary period commences only when the training ends. That being so, the relevant date for considering the petitioner's seniority is 18th August, 1967. The rules do not contemplate any credit being given for the period of training undergone by a direct recruit and, therefore, the fact that he was appointed in 1966 is of little moment. The second respondent joined the post of Joint Commercial Tax Officer as a transferee recruit and therefore the date of commencement of his probation was 25th January, 1967. Clearly, he entered service effectively from an earlier date than the petitioner.

Now having regard to the circumstance that the cadre of Joint Commercial Tax Officers is drawn both from direct recruits and transferee recruits, it is necessary to have a single combined inter-se seniority list. There can be no quarrel with the principle that officers whose effective entry into the service pertains to a particular year should be regarded as a unit in themselves for fixing their inter-se seniority. Correctly, therefore, the petitioner and the second respondent have been placed in the 1967 list. We have already observed that the effective date on which a direct recruit joins as a Joint Commercial Tax Officer is the date on which he commences his probation. In the determination of inter-se seniority, the High Court has followed the provision in the Special Rules that the posts of Joint Commercial Tax Officers are to be filled in the proportion of 1 : 2 between direct recruits and transferee recruits. The cyclical order in which the vacancies will be filled on that basis are provided by the order of the Government published in G.O. Ms. No. 4103 dated 9th July, 1973. Where the rules are specifically silent there is no doubt that the Government is entitled to make an order filling up any lacuna or uncovered gap in the rules. It may also be observed that there is good reason in the principle followed in this case that seniority should be based on the length of effective service. The date of confirmation in a post then loses its relevance.

In regard to the contention of the petitioner that he was not a party to the writ petitions decided by the High Court and that, therefore, the

**A** principles laid down in the High Court judgment should not be applied to him, we think the submission to be without force. The principles propounded by the High Court are principles of general application and drawn from the rules governing the service and the concepts implied therein. They are not principles applicable peculiarly only to the parties to the writ petitions. Indeed, we find no fault with the terms in which the principles have been enunciated. They are principles which could legitimately form the basis of a combined inter-se seniority list in respect of Joint Commercial Tax Officers. Having due regard to the considerations mentioned above, we are of opinion that the places assigned in the second seniority list to the petitioner and the second respondent truly represent their relative seniority.

**C** We may also observe that the second seniority list was prepared after issuing notice to the petitioner and affording him an opportunity to be heard in the matter. It was after all the objections had been considered that the list was finally drawn up. As regards the point whether the seniority of the petitioner in the category of posts higher than the category of Joint Commercial Tax Officers should be determined on the basis of his seniority as Joint Commercial Tax Officer, that is a question which does not arise presently. No combined inter-se seniority list in respect of the cadre of Assistant Commissioners or of higher posts appears to have been drawn up. There is no material before us to show that it has and, if it has, what is the position of seniority assigned to the petitioner therein. In the circumstances we think it premature to express any opinion on this point.

**E** The second seniority list was prepared on 27th December, 1977. The writ petition was filed in this Court in May, 1979. The gross delay, plainly apparent, would constitute another ground for denying relief to the petitioner. But as, in our judgment, the petitioner fails on the merits we need not go further into the question of laches.

**F** The petition fails and is dismissed, but in the circumstances there is no order as to costs.

**G** S.R.

*Petition dismissed*