

A S. PANNEER SELVAM & ORS.

v.

GOVERNMENT OF TAMIL NADU & ORS.

(Civil Appeal Nos. 6631-6632 of 2015 etc.)

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AUGUST 27, 2015

**[T. S. THAKUR AND R. BANUMATHI, JJ.]**

C *Constitution of India, 1950 – Art. 16(4A) – Applicability of – To the consequential seniority in promotional position – To the reserved category accelerated promotees promoted on the basis of rules of reservation – In absence of a specific provision or policy decision of the State to that effect – Held: In the absence of any provision or provision or policy decision as regards consequential seniority, Art. 16(4A) of the Constitution will not be applicable automatically, whereas the ‘catch-up rule’ will be applicable – The roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, will regain their seniority – Rule 12 of Tamil Nadu Engineering Service Rules (Special Rules) or Rule 35(aa) of Tamil Nadu State and Subordinate Service Rules (General Rules) are not applicable to consequential seniority – The reserved category candidates in the present case had been temporarily promoted u/r.39(a) and r.10(a)(i) of the General rules with the condition that their inclusion in the promotional order was not to confer any right, in the service – State directed to revise the seniority list applying the catch up rule – Service Law – Reservation in promotion – Tamil Nadu Engineering Service Rules – r.12 – Tamil Nadu State and Subordinate Service Rules – rr. 35(aa), 39(a) and 10(a)(i).*

E Service Law:

H Promotion/Seniority – Catch-up rule – Applicability of

– Discussed.

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*Seniority – Determination of – Held: Determination of seniority is a vital aspect in the service career of an employee and his future promotion is dependent on that – Therefore, such determination must be based on just and fair principles.*

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**Allowing the appeals, the Court**

**HELD: 1. Article 16(4A) of the Constitution is only an enabling provision which specifically provides that the concerned State may make any provision for providing reservation of appointments or posts in favour of any backward class citizens which is not adequately represented in the services under the State. Articles 16(4) and 16(4A) have to be read with Article 335 of the Constitution which deal with norms of Scheduled Castes and Scheduled Tribes to services and posts and lay down that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. [Para 24] [685-E-G]**

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**2. In the absence of any specific provision or policy decision taken by the State Government for consequential seniority for reserved category accelerated promotees, there is no question of automatic application of Article 16 (4A) of the Constitution. As per Rule 12 of Tamil Nadu Engineering Service Special Rules, reserved category Assistant Engineers and the reserved category Junior Engineers secured promotion as Assistant Divisional Engineers much earlier to the general category Assistant Engineers and Junior Engineers respectively because of their accelerated**

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- A promotion following rule of reservation. Rule 12 evidently does not provide for the consequential seniority for reserved category promotees at any point of time. The consequential seniority for such reserved category promotees can be fixed only if there is express provision for such reserved category promotees in the State rules. [Paras 25 and 26] [686-D-H]

3. In terms of Rule 12, reservation is followed only for promotion of AEs/JEs as Assistant Divisional Engineers and Rule 12 does not protect the consequential seniority to ADEs who were promoted following the rule. The appellants belonging to the general category are not questioning the accelerated promotion granted to the Junior Engineers/Assistant Engineers by following rule of reservation but are only seeking fair application of the 'catch up rule' in the fixation of seniority in the category of ADEs. [Para 27] [687-C-D]

4. In the absence of any rule conferring consequential seniority in the State of Tamil Nadu 'catch up rule' is applicable even amongst Junior Engineers promoted as ADEs following rule of reservation and also for their *inter-se* seniority amongst AEs promoted as ADEs and JEs promoted as ADEs following rule of reservation. [Para 31] [689-D-E]

5. Rule 35 (aa) of Tamil Nadu State and Subordinate Service (General) Rules is applicable only for normal appointments to any service, class, category or grade and not reserved category promotions. Rule 35 (aa) does not specifically provide for consequential seniority to the accelerated promotees who were promoted following the rule of reservation and Rule 35 (aa) is of no assistance to the contesting respondents. [Para 32] [690-D-E]

6. The private respondents in the present case have been promoted temporarily under Rule 39 (a) and Rule 10 (a) (i) of the General Rules with the condition that their inclusion in the promotional order shall not confer on them any right whatsoever in the service. Determination of seniority is a vital aspect in the service career of an employee and his future promotion is dependent on this. Therefore, determination of seniority must be based on some principles which are just and fair. In the absence of any policy decision taken or rules framed by the State of Tamil Nadu regarding Tamil Nadu Highways Engineering Service, accelerated promotion given to the respondents following rule of reservation in terms of Rule 12 will not give them consequential accelerated seniority. [Para 33] [692-C-F]

7. The respondents' submission regarding inadequacy of representation of Scheduled Castes/ Scheduled Tribes in the Tamil Nadu Highways Engineering Service by itself is not sufficient to uphold the inadequacy of representation of SCs/STs in the said service. Even after Eighty-fifth Amendment of the Constitution, the State is duty bound to collect data so as to assess the adequacy of representation of the Scheduled Caste candidates in the service and based on the same, the State should frame a policy/rules for consequential seniority. No material is placed on record that the State of Tamil Nadu has ever undertaken such exercise of collecting data of adequacy of representation of the SC/ST candidates in the Tamil Nadu Highways Engineering Service. [Para 31] [689-B-D]

8. Both the Assistant Engineers in the Tamil Nadu Engineering Service and the Junior Engineers in the Tamil Nadu Engineering Subordinate Service are feeder

- A categories for filling up higher post of the Assistant Divisional Engineer in the ratio of 3:1 between them. Although, Assistant Engineers and Junior Engineers are presently two distinct categories, prior to 1993, both Assistant Engineers and Junior Engineers were in one category of service-Tamil Nadu Highways Engineering Subordinate Service. Only after G.O.Ms.No.807, Public Works (HK) Department dated 24.05.1993, the post of Assistant Engineer was raised to the level gazetted status and they were brought in to State Service/Tamil Nadu Highways Engineering Service. For promotion, even though two separate seniority lists are prepared for each category, they are actually of the same cadre and therefore, it cannot be said that if Junior Engineers are promoted as ADEs following rule of reservation applying Rule 12, it does not affect the services of the Assistant Engineers. [Para 34] [692-A; 693-A-D]

9. In the absence of any provision for consequential seniority in the rules, the 'catch up rule' will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench proceeded on an erroneous footing that Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees. State Government-respondent Nos. 1 and 2 are directed to revise the seniority list of Assistant Divisional Engineers applying the 'catch up rule'. [Paras 35 and 36] [693-E-F, G-H]

- Ajit Singh And Ors.(II) vs. State of Punjab And Ors.*  
(1999) 7 SCC 209: 1999 (2) Suppl. SCR 521;

*M. Nagaraj And Ors. vs. Union of India And Ors.*  
**(2006) 8 SCC 212: 2006 (7) Suppl. SCR 336 – followed.**

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*Union of India And Ors. vs. Virpal Singh Chauhan And Ors.* **1995 (4) Suppl. SCR 158 : (1995) 6 SCC 684;** *Ajit Singh Januja & Ors. vs. State of Punjab & Ors.* **1996 (3) SCR 125 : (1996) 2 SCC 715;** *R. K. Sabharwal And Ors. vs. State of Punjab And Ors.* **1995 (2) SCR 35 : (1995) 2 SCC 745;** *Ajit Singh And Ors. (II) vs. State of Punjab And Ors.* **(1999) 7 SCC 209:1999 (2) Suppl. SCR 521** ; *M. Nagaraj And Ors. vs. Union of India And Ors.* **(2006) 8 SCC 212: 2006 (7) Suppl. SCR 336 ;** *Shiv Nath Prasad vs. Saran Pal Jeet Singh Tulsi And Ors.* **(2008) 3 SCC 80: 2008 (1) SCR 530 ;** *Chairman And Managing Director, Central Bank of India And Ors. vs. Central Bank of India SC/ST Employees Welfare Association And Ors.,* **2015 (1) SCALE 169 – relied on.**

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*Indra Sawhney And Ors. vs. Union of India And Ors.* **(1992) Suppl. 3 SCC 217:1992 ( 2 ) Suppl. SCR 454;** *Union of India And Ors. vs. Virpal Singh Chauhan And Ors.* **(1995) 6 SCC 684:1995 ( 4 ) Suppl. SCR 158;** *Ajit Singh Januja & Ors. vs. State of Punjab & Ors.* **(1996) 2 SCC 715: 1996 (3) SCR 125 ;** *R. K. Sabharwal And Ors. vs. State of Punjab And Ors.* **(1995) 2 SCC 745: 1995 (2) SCR 35 ;** *Jagdish Lal And Ors. vs. State of Haryana And Ors.* **(1997) 6 SCC 538;** *Uttar Pradesh Power Corporation Limited vs. Rajesh Kumar And Ors.* **(2012) 7 SCC 1: 2012 (4) SCR 118 – referred to.**

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Case Law Reference

**1995 (4) Suppl. SCR 158      relied on.      Para 6, 12**

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A	1996 (3) SCR 125	relied on.	Para 6, 14
	1995 (2) SCR 35	relied on.	Para 6, 14
	1999 (2) Suppl. SCR 521	relied on.	Para 6
B	2006 (7) Suppl. SCR 336	relied on.	Para 6
	992 (2) Suppl. SCR 454	referred to.	Para 9
	1995 (4) Suppl. SCR 158	referred to.	Para 12
C	1996 (3) SCR 125	referred to.	Para 14
	1995 (2) SCR 35	referred to.	Para 14
	(1997) 6 SCC 538	referred to.	Para 15
D	1999 (2) Suppl. SCR 521	followed.	Para 16
	2006 (7) Suppl. SCR 336	followed.	Para 18
	2008 (1) SCR 530	relied on.	Para 19
E	2015 (1) SCALE 169	relied on.	Para 19
	2012 (4) SCR 118	referred to.	Para 20

## CIVILAPPELLATE JURISDICTION : CIVILAPPEAL NO.

F 6631-6632 of 2015.

From the Judgment and Order dated 25.11.2011 of the High Court of Judicature at Madras in Writ Appeal Nos. 113 and 207 of 2009.

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WITH

C.A. Nos. 6633 and 6634-6636 of 2015

Dr. Rajiv Dhawan, R. Thuragarajan, Kiran Suri, N.  
H Subramaniam, T. Anamika, B. Balaji, V. Balachandran,

Rakesh Sharma, R. Shase, S. J. Amith, Dr. Vipin Gupta for the appearing parties. A

The Judgment of the Court was delivered by

**R. BANUMATHI, J.** 1. Leave granted in all the special leave petitions. B

2. Common issues involved in this bunch of appeals are:-(i) In the absence of policy decision taken by the State/ rules framed pursuant to the enabling provision of Article 16 (4A) of the Constitution of India whether a reserved category candidate promoted on the basis of reservation earlier than his senior general category candidate in the feeder category can claim consequential seniority in the promotional post; (ii) In the absence of policy decision taken by the State with regard to Tamil Nadu Highways Engineering Service Rules, whether Division Bench was right in holding that Article 16(4A) of the Constitution of India by itself would give consequential seniority in addition to accelerated promotion to the roster-point promotees. C D E

3. These appeals are filed assailing the common judgment dated 25.11.2011 passed by the High Court of Judicature at Madras in Writ Appeals No. 113, 207 and 208 of 2009 whereby the High Court while setting aside the order passed by the learned Single Judge observed that the object of the amending Article 16 (4A) of the Constitution of India is to give consequential seniority in addition to accelerated promotion to roster-point promotees thereby holding that 'catch-up rule' is not applicable among the Assistant Divisional Engineers appointed from the post of Junior Engineers following the rule of reservation. For convenience, parties are referred to as per their array in the appeals arising out of SLP (Civil) Nos. 8366-8367 of 2012. F G

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A           4. The appellants are graduate Assistant Engineers and  
the contesting private respondents are Diploma holder Junior  
Engineers are entangled in several rounds of litigation for about  
two decades over the nagging question of '*catch-up rule*' and  
the consequential seniority in the promotional post of Assistant  
B Divisional Engineers. Before adverting to the legal issues, it  
would be appropriate to refer to the background facts.  
Engineers of Tamil Nadu Highways Department viz., Chief  
Engineers, Superintending Engineers, Divisional Engineers  
and Assistant Divisional Engineers are governed by Tamil Nadu  
C Highways Engineering Service Rules. Assistant Engineers,  
Junior Engineers, Supervisors and further lower categories  
are governed by Tamil Nadu Highways Engineering  
Subordinate Service Rules. The categories viz., Assistant  
D Engineers and Junior Engineers were feeder categories to  
the category of Assistant Divisional Engineer and the first three  
vacancies to be filled by Assistant Engineers and the fourth  
vacancy to be filled by recruitment by transfer by Junior  
E Engineer of Tamil Nadu Highways Engineering Subordinate  
Service. Rule 12 of Special Rules to Tamil Nadu Highways  
Engineering Service prescribes application of rule of  
reservation for the appointment of Assistant Divisional  
Engineers by direct recruitment and recruitment by transfer.  
Accordingly prior to 24.05.1993, the Assistant Engineers and  
F Junior Engineers were appointed as Assistant Divisional  
Engineers by recruitment by transfer after following the rule of  
reservation.

5. List of Assistant Engineers/Junior Engineers as on  
G 01.01.1993 was published vide Chief Engineer Memo No. 960/  
N4/91 dated 18.04.1994 not following the '*catch up rule*'. One  
Assistant Divisional Engineer (ADE) D. Rajendran who  
belonged to general category, who was overlooked for  
promotion by Assistant Engineers who belonged to reserved  
H category filed O.A. No.2186/1996 before the Tamil Nadu

Administrative Tribunal challenging the consequential seniority A  
given to the reserved category Assistant Divisional Engineers  
and prayed to revise the seniority in the higher category as  
obtained in the lower category. Relying upon *Ajit Singh Januja*  
& Ors. vs. *State of Punjab & Ors.*, (1996) 2 SCC 715, vide B  
order dated 29.11.1996, the tribunal allowed the application  
observing that even though the respondents therein were  
promoted as ADEs earlier to D. Rajendran, they cannot be  
placed above the applicant by virtue of accelerated promotion  
and giving them the consequential seniority. Aggrieved by the C  
order in O.A. 2186/1996, Special Leave Petition (Civil) No.  
24455/1996 was filed by the ADEs of the reserved category  
which was dismissed by this Court vide order dated  
18.12.1996.

6. On 29.04.2004, seniority list of Assistant Divisional D  
Engineers was published by applying 'catch-up rule' among  
ADEs appointed from Assistant Engineers and consequential  
seniority was not given to SC/ST Assistant Divisional  
Engineers appointed from Assistant Engineers. But the 'catch-  
up rule' was not applied among the ADEs appointed from E  
Junior Engineers and thereby giving benefit of consequential  
seniority to SC/ST Assistant Divisional Engineers appointed  
from Junior Engineers in addition to accelerated promotion.  
Aggrieved by the seniority list dated 29.04.2004 and the F  
subsequent seniority list fit for further promotion to the post of  
Divisional Engineer dated 19.08.2005, the Assistant  
Engineers who were selected by the Tamil Nadu Public Service  
Commission under the junior category filed the writ petition in  
the High Court. Contention advanced by the appellants/writ G  
petitioners was that the promotion given to Junior Engineers  
as ADEs was based on rule of reservation and in the  
promotional post it would not reverse the seniority of the seniors  
in the feeder category who gained promotions subsequently.  
Relying on the decisions of this Court reported in *Union of H*

- A *India And Ors. vs. Virpal Singh Chauhan And Ors.*, (1995) 6 SCC 684; *Ajit Singh Januja And Ors. vs. State of Punjab And Ors.*, (1996) 2 SCC 715; *R.K. Sabharwal And Ors. vs. State of Punjab And Ors.*, (1995) 2 SCC 745; *Ajit Singh And Ors. (II) vs. State of Punjab And Ors.*, (1999) 7 SCC 209
- B and *M. Nagaraj And Ors. vs. Union of India And Ors.*, (2006) 8 SCC 212, learned Single Judge of the High Court held that the State failed to follow the dictum laid down by the Supreme Court in the above judgments and erred in issuing the seniority list of Assistant Divisional Engineers, Tamil Nadu Highways
- C Engineering Service by ignoring the principle of '*catch-up rule*' vis-a-vis '*inter-se seniority*' of the seniors who have gained promotion subsequently. The Single Judge thus allowed the batch of writ petitions by setting aside the seniority list dated
- D 29.04.2004 and directed the authorities to prepare the revised seniority list of the Assistant Divisional Engineers.

7. Aggrieved, the respondents-promotees promoted as ADEs from Junior Engineers in the reserved category preferred writ appeals and the Division Bench by the impugned
- E judgment while setting aside the order passed by the Single Judge held that the object of the amending Article 16 (4A) of the Constitution of India is to give accelerated promotion to roster-point promotees in addition to accelerated promotion
- F and thereby held that the '*catch-up rule*' is not applicable among the Assistant Divisional Engineers appointed from the post of Junior Engineers by recruitment by transfer following reservation rules. These appeals assail the correctness of the above judgment.

- G 8. Having heard both the parties, we have given our thoughtful consideration to the rival contentions in the light of the principles enunciated by this Court in a catena of decisions.

- H 9. The concept of '*catch-up rule*' and '*consequential seniority*' is judicially evolved concepts to control the extent of

reservation. The question of reservation and the associated A  
promotion and the consequential seniority have been the  
matter of discussion in various decisions of this Court. The  
matter regarding reservation in promotions was considered  
by a nine Judge Bench of this Court in *Indra Sawhney And*  
*Ors. vs. Union of India And Ors.*, (1992) Supp. 3 SCC 217 B  
and this Court held that the reservation under Article 16(4) of  
the Constitution of India is confined only to initial appointment  
and cannot extend to reservation in the matter of promotion.  
In order to nullify the effect of the aforesaid dicta, there was an C  
amendment to Article 16 by Constitution (Seventy-seventh  
Amendment) Act with effect from 17.06.1995. Vide this  
Amendment, after Clause (4), Clause (4A) was inserted in  
Article 16 of the Constitution.

10. Clause (4) and Clause (4A) of Article 16 of the D  
Constitution of India read as under:-

**“Clause 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 E  
of citizens which, in the opinion of the State, is not  
adequately represented in the services under the State.

**Clause 4A.** Nothing in this article shall prevent the State  
from making any provision for reservation in matters of F  
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 State,  
are not adequately represented in the services under the  
State.” G

11. Article 16 (4) of the Constitution of India enables the  
State to make a provision for reservation for appointments or  
posts in favour of any backward class of citizens which in its  
opinion is not adequately represented in the services under  
the State. The constitutional position on the insertion of Clause H

- A (4A) in Article 16 is that the State is now empowered to make provision for reservation in the matter of promotions as well, in favour of SCs and STs wherever the State is of the opinion that the SCs and STs are not adequately represented in the service under the State. Clause (4A) of Article 16 of the
- B Constitution is only an enabling provision which empowers the State to make any provision for reservation for SC and ST candidates in the matter of promotion as well.

12. In *Union of India And Ors. vs. Virpal Singh Chauhan And Ors.*, (1995) 6 SCC 684, a question had arisen as to whether a person in SC or ST category who gets accelerated promotion because of reservation would also get consequential seniority in the higher post if he gets that promotion earlier than his senior in general category and this
- D Court held that such an employee belonging to SC/ST category on promotion would not get consequential seniority and his seniority will be governed by the panel position. It was held as under:-

- E "24. ... In short, it is open to the State, if it is so advised, to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/
- F roster shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that
- G he is promoted subsequent to the reserved candidate. There is no unconstitutionality involved in this. It is permissible for the State to so provide..."

13. The decision in *Virpal Singh Chauhan* case led to
- H another Constitution Amendment and the Parliament enacted

Constitution (Eighty-fifth Amendment) Act 2001 whereby Clause (4A) of Article 16 was further amended enabling the State to make a provision for reservation in matters of promotion with consequential seniority. Amended Clause (4A) reads as under:-

**"4A.** Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

Eighty-fifth Amendment was made effective retrospectively from 17.06.1995, that is, the date of coming into force the original Clause (4A) of Article 16 of the Constitution of India.

14. In *Ajit Singh Januja And Ors. vs. State of Punjab And Ors.*, (1996) 2 SCC 715, by placing reliance on the principle laid down in *Indra Sawhney* case and also the Constitution Bench judgment in *R.K. Sabharwal And Ors. vs. State of Punjab And Ors.*, reported in (1995) 2 SCC 745, a three Judge Bench accepted the principle of 'catch-up rule' as laid down in *Virpal Singh Chauhan* case observing that the balance must be maintained in such a manner that there was no reverse discrimination against the general category candidates and that any rule/circular or order which gives seniority to the reserved category candidates promoted at the roster-point would be violative of Articles 14 and 16 of the Constitution of India.

15. In *Jagdish Lal And Ors. vs. State of Haryana And Ors.*, (1997) 6 SCC 538, another three Judge Bench opined that seniority granted to the Scheduled Caste and Scheduled

- A Tribe candidates over a general category candidate due to his accelerated promotion does not in all events got wiped out on promotion of general category candidate.

- B 16. In *Ajit Singh And Ors. (II) vs. State of Punjab And Ors.*, (1999) 7 SCC 209, the Constitution Bench was concerned with the issue whether the decisions in *Virpal Singh Chauhan* and *Ajit Singh Januja* case which were earlier decided to the effect upholding the 'catch-up rule', that is, the seniority of general category candidates is to be confirmed or whether the later deviation made in *Jagdish Lal* case against the general category candidates. In *Ajit Singh (II)* case, *inter-alia*, the following points arose for consideration:-

- D (i) Can the roster-point promotees count their seniority in the promoted category from the date of their continuous officiation vis-à-vis general candidates, who were senior to them in the lower category and who were later promoted to the same level?
- E (ii) Have *Virpal* [(1995) 6 SCC 684] and *Ajit Singh* [(1996) 2 SCC 715] been correctly decided and has *Jagdish Lal* [(1997) 6 SCC 538] been correctly decided?
- (iii) Whether the "catch-up" principles are tenable?

- F 17. The Constitution Bench held that Articles 16(4) and (4A) did not confer any fundamental right to reservation and that they are only enabling provisions. Overruling the judgment in *Jagdish Lal* case and observing that rights of the reserved classes must be balanced against the interests of other segments of society in para (77), this Court held as under:-

- G "77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, — vis-à-vis the general candidates who were senior to them in the lower category
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and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate — he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that *Virpal*, (1995) 6 SCC 684 and *Ajit Singh*, (1996) 2 SCC 715 have been correctly decided and that *Jagdish Lal*, (1997) 6 SCC 538 is not correctly decided. Points 1 and 2 are decided accordingly.”

18. Constitutional validity of Clauses (4A) and (4B) of Article 16 of the Constitution was challenged in *M. Nagaraj And Ors. vs. Union of India And Ors.*, (2006) 8 SCC 212. The question that came up for consideration was whether by virtue of impugned constitutional amendments, the power of Parliament was so enlarged as to obliterate any or all of the constitutional limitations and requirements upholding the validity of the said Articles with certain riders. On the concept of ‘catch-up rule’ and consequential seniority, this Court held as under:-

“79. Reading the above judgments, we are of the view that the concept of “catch-up” rule and “consequential seniority” are judicially evolved concepts to control the extent of reservation. The source of these concepts is in service jurisprudence. These concepts cannot be elevated to the status of an axiom like secularism, constitutional sovereignty, etc. It cannot be said that by insertion of the concept of “consequential seniority” the structure of Article 16(1) stands destroyed or abrogated. It cannot be said that “equality code” under Articles 14, 15 and 16 is violated by deletion of the “catch-up” rule. These concepts are based on practices. However, such



- A practices cannot be elevated to the status of a constitutional principle so as to be beyond the amending power of Parliament. Principles of service jurisprudence are different from constitutional limitations. Therefore, in our view neither the “catch-up” rule nor the concept of
- B “consequential seniority” is implicit in clauses (1) and (4) of Article 16 as correctly held in *Virpal Singh Chauhan*, (1995) 6 SCC 684.”

19. In *Nagaraj* case Court further considered two
- C questions viz.:- (1) Whether there is any upper-limit beyond which reservation is not permissible? (2) Whether there is any limit to which seats can be reserved in a particular year; in other words, the issue is whether the percentage limit applies only on the total number of posts in the cadre or to the
- D percentage of posts advertised every year as well? Answering the said questions in paras (121) and (123), this Court held as under:-

- E “121. The impugned constitutional amendments by which Articles 16(4-A) and 16(4-B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for
- F reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the
- G concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in *Indra Sawhney*, 1992 Suppl. (3) SCC 217, the concept of post-based roster with inbuilt concept of replacement as held in *R.K. Sabharwal*, (1995) 2 SCC 745.
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123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely."

The Constitution Bench judgment in *Nagaraj* case (supra) was subsequently followed in *Shiv Nath Prasad vs. Saran Pal Jeet Singh Tulsi And Ors.*, (2008) 3 SCC 80 and *Chairman And Managing Director, Central Bank of India And Ors. vs. Central Bank of India SC/ST Employees Welfare Association And Ors.*, 2015 (1) SCALE 169.

20. While considering the validity of Section 3(7) of Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and Rule 8A of U.P. Government Servants Seniority Rules, 1991 which provided for consequential seniority in promotions given to SCs/STs by virtue of rule of reservation/roster and holding that Section 3(7) of the 1994 Act and Rule 8A of 1991 Rules are *ultra vires* as they run counter to the dictum in *M. Nagaraj's* case in *Uttar Pradesh Power Corporation Limited vs. Rajesh*

A *Kumar And Ors.*, (2012) 7 SCC 1, in paragraph (81), this Court summarized the principles as under:

B “(i) Vesting of the power by an enabling provision may be constitutionally valid and yet “exercise of power” by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure the backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335.

C (ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of the principle of equality under Article 14.

D (iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.

E (iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling limit of 50% is not violated. Further, roster has to be post-specific and not vacancy based.

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G (v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4-A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4-A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4-A). Therefore, clause (4-A) will be governed by the two compelling reasons-“backwardness” and “inadequacy of  
H

representation", as mentioned in Article 16(4). If the said two reasons do not exist, then the enabling provision cannot be enforced. A

(vi) If the ceiling limit on the carry over of unfilled vacancies is removed, the other alternative time factor comes in and in that event, the timescale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the timescale is not kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact situation. B C

(vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation. D

(viii) The constitutional limitation under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case. E

(ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. F G

(x) Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists H

A backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment."

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21. In the light of the above, we shall consider the factual matrix and the rival contentions urged and the purport of Rule 12 of Tamil Nadu Highways Engineering Service Rules.

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22. Dr. Rajiv Dhawan, learned Senior Counsel for the appellants and Ms. Kiran Suri, learned senior counsel appearing for the similarly placed respondents submitted that while it is well-settled law followed by this Court in a catena of cases *M. Nagaraj And Ors. Vs. Union of India & Ors.*, (2006)

D

8 SCC 212 that Article 16 (4A) is only an enabling provision and does not automatically confer right on the reserved categories and when no policy decision was taken by the State, Article 16 (4A) does not *per se* applicable to Tamil Nadu Highways Engineering Service conferring consequential

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seniority to the Junior Engineers who obtained accelerated promotion by following rule of reservation. It was further submitted that post of Assistant Engineers to be promoted as ADEs constitute more than 75% of the cadre strength and by not applying the '*catch up rule*' among the Assistant Divisional

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Engineers promoted from Junior Engineers by following rule of reservation would result in patent discrimination creating disharmony amongst the cadre. On behalf of the appellants, it was urged that the implementation of the impugned judgment of the Division Bench of the High Court would result in

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conferring seniority to a less qualified and less experienced Assistant Divisional Engineer appointed from Junior Engineer belonging to SC/ST category and who stand on a higher footing both on education and experience than the Assistant Divisional Engineers belonging to general category would offend the rule

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of equality.

23. Per contra, learned Senior Counsel Mr. R. Thiagarajan contended that there is no common list of seniority of the appellants who are the direct recruit Assistant Engineers and the respondents who are in the cadre of Junior Engineers and, therefore, the services of the appellants and the respondents cannot be compared and the 'catch up rule' is not applicable. The learned Senior Counsel further contended that promotion given to the respondents were not accelerated promotion but promotion on account of rule of reservation following Rule 12 of Tamil Nadu Highways Engineering Service Rules. The respondents contended that Article 16 (4A) of the Constitution has been added to protect the consequential seniority arising out of accelerated promotions and when such amendment is held to be valid and not ultra vires the Constitution by this Court in *M. Nagaraj* case (supra), the Single Judge ought not to have allowed the writ petitions and the Division Bench rightly set aside the order of the Single Judge.

24. Article 16(4A) of the Constitution is only an enabling provision which specifically provides that the concerned State may make any provision for providing reservation of appointments or posts in favour of any backward class citizens which is not adequately represented in the services under the State. Articles 16(4) and 16(4A) have to be read with Article 335 of the Constitution which deal with norms of Scheduled Castes and Scheduled Tribes to services and posts and lay down that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. In the absence of any policy decision taken by the State of Tamil Nadu, Eighty-fifth Amendment *per se* will not protect the consequential seniority granted to the respondents who were

- A promoted to the post of Assistant Divisional Engineers following the rule of reservation.

25. The respondents placed heavy reliance upon Rule 12 of the Special Rules Tamil Nadu Engineering Service and  
B contended that their consequential seniority is protected in terms of Rule 12 and under Article 16 (4A) of the Constitution of India. Rule 12 reads as under:-

- C **“Rule 12: Reservation of appointments:** The rule of reservation of appointments (General Rule 22) shall apply to the appointment of Assistant Divisional Engineers by direct recruitment and recruitment by transfer separately and the appointment of Assistant Engineers by direct recruitment.”

- D As per Rule 12, reserved category Assistant Engineers and the reserved category Junior Engineers secured promotion as Assistant Divisional Engineers much earlier to the general category Assistant Engineers and Junior Engineers respectively because of their accelerated promotion following  
E rule of reservation.

26. The true legislative intent under Article 16 (4A) of the Constitution is to enable the State to make provision or frame rules giving consequential seniority for the accelerated  
F promotion gained based on the rule of reservation. Rule 12 evidently does not provide for the consequential seniority for reserved category promotees at any point of time. The consequential seniority for such reserved category promotees can be fixed only if there is express provision for such reserved  
G category promotees in the State rules. In the absence of any specific provision or policy decision taken by the State Government for consequential seniority for reserved category accelerated promotees, there is no question of automatic  
H application of Article 16 (4A) of the Constitution.

27. Respondents contended that in about eight departments of the State, rule of reservation is followed and one among them is Tamil Nadu Highways Engineering Service and in terms of Rule 12 practice of following rule of reservation in promotion is in existence for more than sixty years and therefore the Division Bench rightly extended the protection under Article 16(4A) to accelerated promotees. We are not impressed with the above submission. In terms of Rule 12, reservation is followed only for promotion of AEs/JEs as Assistant Divisional Engineers and Rule 12 does not protect the consequential seniority to ADEs who were promoted following the rule. The appellants belonging to the general category are not questioning the accelerated promotion granted to the Junior Engineers/Assistant Engineers by following rule of reservation but are only seeking fair application of the 'catch up rule' in the fixation of seniority in the category of ADEs.

28. Protection of the consequential seniority conferred on the Assistant Engineers appointed as Assistant Divisional Engineers following rule of reservation during the year 1994 was held to be unconstitutional in the earlier round of litigation in Original Application No.2186/1996 dated 29.11.1996 before the Tamil Nadu Administrative Tribunal and the same was confirmed by this Court in Special Leave Petition (Civil) No.24455/1996 titled *Tr. J. Sabapathy And Ors. vs. D. Rajendran And Ors.* decided on 18.12.1996. Pursuant to the same seniority of the Assistant Engineers promoted as ADEs following rule of reservation had been lowered following 'catch up rule'.

29. Now let us consider the crux of the dispute. While publishing the impugned seniority list dated 29.04.2004, the 'catch up rule' was applied among the Assistant Divisional Engineers appointed from Assistant Engineers and



- A consequential seniority was not given to SC/ST Assistant Divisional Engineers appointed from Assistant Engineers; but the '*catch up rule*' was not applied to the Assistant Divisional Engineers promoted from Junior Engineers and thus consequential seniority was given to the SC/ST Assistant Divisional Engineers-accelerated promotees. According to the State, '*catch-up rule*' was applied to the Assistant Divisional Engineers promoted from Assistant Engineers, since, Assistant Engineers were recruited by Tamil Nadu Public Service Commission and at the time of their initial recruitment as Assistant Engineers, rule of reservation was strictly followed by Tamil Nadu Public Service Commission. In the counter affidavit filed before the High Court, the State has taken the stand that the '*catch up rule*' was not applied in the case of JEs promoted as ADEs or regarding their *inter se* seniority of Assistant Engineers and the Junior Engineers since rule of reservation was not followed at the time of their appointment as Junior Engineers.

30. Mr. Thiagarajan, learned Senior Counsel appearing for the private respondents submitted that under the Right to Information Act, information was sought for on behalf of respondent U. Palaniappan and Government furnished the Government Orders for temporary panel of Junior Engineers for promotion as Assistant Divisional Engineers and the said Government Orders furnished would clearly show that there is inadequate representation of Scheduled Caste candidates in various category of Tamil Nadu Highways Engineering Service. It was further submitted that there are only two persons belonging to Scheduled Caste community promoted from the rank of Junior Engineer after 17.06.1995 to the higher post of Assistant Divisional Engineer and Divisional Engineer and of these two persons one has been promoted to the post of Superintending Engineer and no other person is available in the entire department and the inadequacy of representation

was rightly taken into consideration by the Government while implementing the rule of reservation and consequential seniority. A

31. The respondents' submission regarding inadequacy of representation of Scheduled Castes/Scheduled Tribes in the Tamil Nadu Highways Engineering Service by itself is not sufficient to uphold the inadequacy of representation of SCs/STs in the said service. Even after Eighty-fifth Amendment, the State is duty bound to collect data so as to assess the adequacy of representation of the Scheduled Caste candidates in the service and based on the same the State should frame a policy/rules for consequential seniority. No material is placed on record that the State of Tamil Nadu has ever undertaken such exercise of collecting data of adequacy of representation of the SC/ST candidates in the Tamil Nadu Highways Engineering Service. In the absence of any rule conferring consequential seniority in the State of Tamil Nadu '*catch up rule*' is applicable even amongst Junior Engineers promoted as ADEs following rule of reservation and also for their *inter-se* seniority amongst AEs promoted as ADEs and JEs promoted as ADEs following rule of reservation. B C D E

32. Respondents placed reliance on Rule 35 (aa) of Tamil Nadu State and Subordinate Service Rules (General Rules) to contend that they are entitled to consequential seniority in promotional position. Rule 35 (aa) relied on by the respondents reads as under:- F

“(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 G

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A which he is appointed to the service, class, category or grade.

B Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed:

C Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se seniority...." (\* Substituted in G.O. Ms. No.523; P & AR, dated 4.06.1982, w.e.f. 13.07.78)

D Rule 35 (aa) of Tamil Nadu State and Subordinate Service (General) Rules relied upon by the 3<sup>rd</sup> respondent is applicable only for normal appointments to any service, class, category or grade and not reserved category promotions. Rule 35 (aa) does not specifically provide for consequential seniority to the accelerated promotees who were promoted following the rule of reservation and Rule 35 (aa) is of no assistance to the contesting respondents.

F 33. As noticed earlier, by application of Rule 12, it is evident that the Assistant Engineers and Junior Engineers of reserved category got promotion to the post of Assistant Divisional Engineer much earlier to the general category candidates. At this juncture, we may refer to the comparative table of service particulars of some of the appellants promoted as ADEs from Assistant Engineers/Junior Engineers and the respondents in the post of Assistant Engineer and Junior Engineer and their position in the cadre of Assistant Divisional Engineer to appreciate the patent discrimination as under:-

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**S. PANNEER SELVAM v. GOVERNMENT OF TAMIL  
NADU [R. BANUMATHI, J.]**

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Name and status in W.P.s., and Community	Educational Qualification	Date of appointment as A.E./J.E. and the name of the service to which the appointments initially made	Date of completion of probation	Sl. No. in the classified list of A.E./J.E. as on 01.01.93	Date of appointment and service as ADE	Sl. No. in ADE as on 01.04.2004
S. Paneer-Selvam, (Petitioner No. 1 in W.P. 33735 & 34077) - MBC	B.E., (C)	07/05/1980 T.N.H.E.S. (* Tamil Nadu Highways Engineering Service)	13.11.1984 A.N.	1180	11/02/2002	201
T.G. Rajasekaran (Petitioner No. 2 in W.P. 33735 & 34077) - MBC	B.E., (C)	10/11/1978 T.N.H.E.S.	09.11.1981 F.N.	1159	09/09/1999	183
V. Vivekanandan (Respondent No. 3 in W.P. 34077) - S.C.	B.E.	30/04/1985 T.N.H.E.S.S.	—	1666 (19)	16/06/1998 (By recruitment by transfer by applying Rule 12 of the Tamil Nadu Highways Engineering Service)	119
V. Appadurai (Respondent No. 4 in W.P. 34077) - S.C.	D.C.E.	29/04/1985 T.N.H.E.S.S.	—	1666 (22)	29/04/1998 (By recruitment by transfer by applying Rule 12 of the Tamil Nadu Highways Engineering Service)	120
U. Palaniappan (Respondent No. 3 in W.P. 33735 & 39142) - S.C.	D.C.E.	13/04/1987 T.N.H.E.S.S.	14.06.1989	1477	12/05/1999 (By recruitment by transfer by applying Rule 12 of the Tamil Nadu Highways Engineering Service)	150

(As extracted in the judgment of the Single Judge)

A If we look at the above comparative table of the service  
particulars of the appellants and the respondents, it is seen  
that the contesting respondents U. Palaniappan joined the  
service almost seven years after the appellants, his seniority  
is automatically accelerated at an unprecedented rate and as  
B on 01.04.2004 his seniority rank as ADE is 150 and seniority  
of V. Appadurai is 120. The appellants who are qualified and  
seniors than the contesting respondents are placed much  
below in rank in comparison to the person belonging to the  
reserved class promotees who were promoted following the  
C rule of reservation. It is to be noted that the private respondents  
in the present case have been promoted temporarily under  
Rule 39 (a) and Rule 10 (a) (i) of the General Rules with the  
condition that their inclusion in the promotional order shall not  
D confer on them any right whatsoever in the service.  
Determination of seniority is a vital aspect in the service career  
of an employee and his future promotion is dependent on this.  
Therefore, determination of seniority must be based on some  
principles which are just and fair. In the absence of any policy  
E decision taken or rules framed by the State of Tamil Nadu  
regarding Tamil Nadu Highways Engineering Service,  
accelerated promotion given to the respondents following rule  
of reservation in terms of Rule 12 will not give them  
consequential accelerated seniority.

F. 34. Appellants were appointed as Assistant Engineers  
directly, while the respondents were initially appointed as Junior  
Engineers. Hence according to the respondents, there was  
no common seniority between the Assistant Engineers  
G belonging to general category and Junior Engineers belonging  
to reserved class and therefore promotion of JEs as ADEs  
applying Rule 12 is of no relevance to the appellants. This  
contention does not merit acceptance. Both the Assistant  
Engineers in the Tamil Nadu Engineering Service and the  
H Junior Engineers in the Tamil Nadu Engineering Subordinate

Service are feeder categories for filling up higher post of the Assistant Divisional Engineer in the ratio of 3:1 between them. Although, Assistant Engineers and Junior Engineers are presently two distinct categories, prior to 1993, both Assistant Engineers and Junior Engineers were in one category of service-Tamil Nadu Highways Engineering Subordinate Service. Only after G.O.Ms.No.807, Public Works (HK) Department dated 24.05.1993, the post of Assistant Engineer was raised to the level gazetted status and they were brought in to State Service/Tamil Nadu Highways Engineering Service. For promotion, even though two separate seniority lists are prepared for each category, they are actually of the same cadre and the respondents cannot contend that if Junior Engineers are promoted as ADEs following rule of reservation applying Rule 12, it does not affect the services of the Assistant Engineers.

35. In the absence of any provision for consequential seniority in the rules, the '*catch up rule*' will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.

36. In the result, the impugned judgment is set aside and these appeals are allowed. State Government-respondent Nos. 1 and 2 are directed to revise the seniority list of Assistant Divisional Engineers applying the '*catch up rule*' within four months. Pursuant to the impugned judgment of the Division Bench of Madras High Court, if any further promotion had been

A granted to the Assistant Divisional Engineers promoted from the rank of Junior Engineers following rule of reservation with consequential seniority, the same shall be reversed. Further promotion of Assistant Divisional Engineers shall be as per the revised seniority list. The parties shall bear their own costs.

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Kalpana K. Tripathy

Appeals allowed.