

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : **18.10.2019**

Judgment Delivered on : **15.11.2019**

CORAM

THE HON'BLE MR. JUSTICE **M.M.SUNDRESH**

and

THE HON'BLE MR. JUSTICE **RMT. TEEKAA RAMAN**

W.P.Nos.998, 1147, 5735, 6649, 22852, 34311, 34312 of 2017, 7511, 8718 to 8720, 10021, 11150, 11151, 18725, 22136, 26442, 31156 of 2018 and W.A.No.2610 of 2019 & W.M.P.Nos.979, 1110, 2406, 7157, 9561 to 9563, 24031, 38184 to 38187 of 2017, 390, 8377, 12804, 13090 to 13093, 25948, 29917, 29932, 30136, 30722, 36350 and 36351 of 2018

W.P.No. 998 of 2017

- 1 K.Raja
Assistant Engineer (Highways) Construction &
Maintenance Wing Perundurai Section
Perundurai.
- 2 R.M.Senthil Kumar
Assistant Engineer (Highways)
Quality Control Division, Chennai-600025.
- 3 M.Anantha Kalyanaraman
Assistant Engineer (Highways)
CMDP Division II, Section 8, Chennai.
- 4 M.Raja
Assistant Engineer (Highways)
O/o. The Chief Engineer (Highways) Projects,
Chennai-600025.
- 5 M.Jaikumar

Assistant Engineer (Highways) Projects
Division, Kancheepuram Section, Chengalpattu.

- 6 V.Singaravel
Assistant Engineer (Highways) Construction &
Maintenance Wing City Road Division
Section 1, Chennai.
- 7 U.Illango
Assistant Engineer (Highways) Construction &
Maintenance Wing, City Roads Division,
Tambaram Section, Tambaram.
- 8 S.Drivadamani
Assistant Engineer (Highways) Quality
Control Division, Sivagangai QC-2, Sivagangai.
- 9 G.Baburaman
Assistant Engineer (Highways) Construction &
Maintenance Wing,
Karur West Section, Karu.

.. Petitioners

Vs

- 1 The Additional Chief Secretary to Government,
Highways and Minor Ports Department,
Fort St. George, Chennai-600009
- 2 Director General (Highways)
Highways Department, Guindy HRS Campus,
Chennai-600025.
- 3 The Secretary
Tamil Nadu Public Service Commission ,
Frazer Bridge Road, Chennai-600003.
- 4 Thiru.Chandrasekar
Assistant Engineer
Quality Control Highways Department
HRS Campus, Chennai- 600025.

.. Respondents

[Permitted the petitioners to implead the fourth respondent in a representative capacity representing the Assistant Engineers who have been placed over and above the petitioners in the impugned seniority list published by the second respondent in Memo No.13748/Admin 2(2)/2014 dated 14/12/2016 as per order dated 12.01.2017 by MSNJ in WMP.No. 976/2017 in WP.998/2017.]

Prayer: Petition filed under Article 226 of the Constitution of India calling for the records of the respondents in connection with the impugned seniority list published by the 2nd respondent in Memo No.13748/Admin 2(2)/2014 dated 14.12.2016 and quash the same and direct the respondents to promote the petitioners as Assistant Divisional Engineers based on the existing seniority list published in G.O.Ms.No.104 Highways (HK.2) Department dated 19.6.2000.

W.P.No.1147 of 2017

- 1 R. Raja, S/o. V.Rathinam,
No. 59/36 K.R.R. Nagar
IInd Street, Theni.
 - 2 S. Pandian
Assistant Engineer (H)
Construction and Maintenance,
Uthamapalayam.
 - 3 S. Renugopal
Assistant Engineer (NH), Ariyalur.
 - 4 R. Alagarsamy
Assistant Engineer,
Quality Control, Madurai.
 - 5 M. Seetharaman
Assistant Engineer (H)
Thanjavur (Regional Lab).
- .. Petitioners

Vs.

- 1 The State of Tamil Nadu

Represented by its Secretary
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 9.

- 2 The Addititonal Chief Secretary to Government,
Highways and Minor Ports Department,
Fort St. George, Chennai - 9.
- 3 The Director General (Highways)
Highways Department, Guindy,
HRS Campus, Chennai - 25.
- 4 The Secretary
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai - 3
- 5 Suvi Chandran
Assistant Engineer (QC), Section-III,
Highways Department, Thiruvallur.
- 6 Prabhakaran, Assistant Engineer (C&M)
Highways Department, Uthankarai.
- 7 Subha
Assistant Engineer(Investigation),
Section - I, Highways Department,
Villupuram.
- 8 Balamurali
Assistant Engineer (Investigation),
Highways Department, Chennai.
- 9 S.Bangaru Mythili
Assistant Engineer (QC),
Section-II, Highways Department,
Dindigul.

[R-5 to R-9 impleaded

as per order dated 31.01.2017 by M.S.N.J in
WMP No.2104/2017 in WP No.1147/2017.]

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to

declare the impugned seniority list in Memo No.13748/Admin 2 (2)/2014 dated 14.12.2016 as illegal and against the judgement of this Honourable court in W.A.No.2705 of 2012 batch and others dated 31.3.2015 and against the law laid down by the Honourable Apex Court in Bimlesh Tanwar 2003 (5) SCC Page 604 and consequently directing the respondents 1 to 3 to prepare the seniority list for the purpose of promotion to the post Assistant Divisional Engineer only as per merit and the marks assigned in the selection as per The Tamilnadu Public Service Commission and without following the rules of reservations.

W.P.No.5735 of 2017

1 A.Chandrasekaran
S/o.Ayenar
Assistant Engineer Quality Control Highways
Department HRS Campus,
Chennai-600 025. .. Petitioner

Vs.

1 State of Tamil Nadu
Rep by Secretary Highways and Minor Ports
Department Fort St. George, Chennai-09.

2 The Director General(Highways)
Highways Department Guindy HRS
Campus Chennai-32.

3 The Secretary
Tamil Nadu Public Service Commission Frazer
Bridge Road, Chennai-03. ..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to declare that Section 70 of the Tamil Nadu Government Servants (Condition of Service) Act Act 14 of 2016 in so as illegal, invalid, unconstitutional, ultra vires and void and in any event not applicable to the petitioner.

W.P.No.6649 of 2017

- 1 I.Vetri Velan (DOB-17.06.1977)
Assistant Engineer PWD/ WRO
S/o..K.Inbasekar,
No.35 North Mada Street,
Thirukalimedu Kancheepuram- 631 501.
- 2 P.Palanikumar
(DOB-02.03.1978) Assistant Engineer PWD/WRO
S/o.P.Periayaiah
No.2A Ganapathy Kovil Street 2nd Street
Nehru Nagar Kamaraj Nagar Main Road Avadi
Chennai-71.
- 3 J.John Devakumar
(DOB-16.06.1981) Assistant Engineer PWD/WRO
S/o.S.Jeevaraj
No.T-4 Jaison Apartments,
Pallavan Nagar, Kancheepuram-631 501.
- 4 S.Jagadeesan (DOB-19.07.1970)
Assistant Engineer PWD/WRO
S/o. D. Saravana Perumal
Plot No.46 Door No.12
Arignar Anna Street Vadivel Nagar
Kancheepuram- 631501.
- 5 S.Baskaran (DOB-03.06.1976)
Assistant Engineer PWD/ WRO
S/o.K. Srinivasan
Flat No.B-3 Thiruvengadam
Janagalakshmi Flats , Venkatapuram,
Ambattur OT, Chennai-53.
- 6 K.Ramesh (DOB-07.06.1973)
Assistant Engineer- PWD/WRO
S/o.E. Krishnasamy, No.2 Ganapathy Nagar,
Pattur, Chennai-600 122.
- 7 M.Lokesh (DOB-29.01.1985)
Assistant Engineer PWD/ WRO
S/o..B. Mohana Rangan

No.7 RB Avenue Sembakkam
Chennai-600 073.

- 8 S.Govindarajan
(DOB-13.06.1977) Assistant Engineer PWD/ WRO
S/o..P.Sivanandham No.2 Om Sakthi
Salai Jem Nagar Kancheepuram- 631 501.
- 9 R.Kanagaraj (DOB-28.08.1978)
Assistant Engineer PWD/WRO
S/o.R. Rajaram
No.32/56A Police Line Jayapuram
Tindivanam- 604 002.
- 10 P.Gopi (DOB-29.07.1975)
Assistant Engineer PWD/WRO
S/o.G. Pandurangan
No.6 1st Cross Street
Vallalar Nagar, Sainathapuram
Vellore- 632 001.
- 11 P.Kumar (DOB-30.04.1981)
Assistant Engineer PWD/WRO
S/o.G.Pachaiappan,
No.D-39 Phase-3 Poonga Nagar,
Vallalar, Vellore- 632 009.
- 12 P.Vijayakumar
(DOB-01.12.1982) Assistant Engineer PWD/ WRO
S/o.R.Palanivelu, No.42 GR Nagar,
Seelanaickanpatty, Salem- 636 201.
- 13 S.Prabhu (DOB-21.03.1982)
Assistant Engineer PWD/WRO
S/o.Thiru K.Saminathan
No.5/21A Malayeripatti
Kanakkapatti Post, Mettur Taluk,
Salem District.

... Petitioners

Vs.

- 1 The Government of Tamilnadu

Rep by Secretary P&AR Department
Secretariat Chennai-9.

- 2 The Engineer-in-Chief (WRO)
& Chief Engineer (General)
Public Works Department, Chepauk, Chennai-5.
- 3 The Tamilnadu Public Service
Commission Rep by Secretary Frazer Bridge
Road Chennai-600 003.
- 4 M.G.Rekha
Assistant Engineer PWD/ WRO (Planning and
Design Section-3 Ariyalur)
O/o. The Executive Engineer PWD/ WRO
Planning & Designs Division Trichy.
- 5 R.Rani
Assistant Engineer PWD/WRO
(Planning and Design Section-7
O/o. The Assistant Executive Engineer PWD/WRO
Planning & Designs Sub-Division Paramakkudi.
- 6 P.Ilayaraja
Assistant Engineer PWD/ WRO
Special Project Section-1
O/o.The Executive Engineer PWD/WRO
Special Project Division
Thanjavur.
- 7 K.Santhi Devi
Assistant Engineer PWD/WRO
O/o.The Executive Engineer PWD/WRO
Special Project Division, Madurai.
- 8 R.Amsaraj
Assistant Engineer PWD/WRO
O/o.The Executive Engineer PWD
Technical Education Division
Government College of Technology Campus,
Coimbatore.

- 9 A.Deepa
Assistant Engineer PWD/WRO
O/o.The Engineer-in-Chief WRO & Chief Engineer
(General) PWD, Chepauk , Chennai-5.
- 10 J.Anbarasi
Assistant Engineer PWD/WRO
O/o.The Chief Engineer PWD
Directorate of Technical Education,
Guindy,Chennai.
- 11 P.Senthil Kumar
Assistant Engineer PWD/WRO
Planning & Designs Section-4
PWD Campus,Pudukottai.
- 12 A.Sathiya
Assistant Engineer PWD/WRO
Ground Water Section-1, Erode.
O/o.The Executive Engineer
PWD/WRO Ground Water Division, Salem.
- 13 B.Sundaram
Assistant Engineer PWD/WRO
Ground Water, Section-2, PWD Campus,
Thiruvallur.
- 14 R.Jayapraba
Assistant Engineer PWD/WRO
Planning & Designs Section-1, Trichy,
O/o.The Executive Engineer PWD/ WRO
Planning & Designs Division , Trichy.
- 15 N.M.V.Senthil Kumar
Assistant Engineer PWD/WRO
Planning & Designs Section-1,
PWD Campus, Sivagangai.
- 16 S.Narayanan
Assistant Engineer PWD/WRO

O/o.The Executive Engineer PWD/WRO
Vellar Basin Division, Virutachalam,
Cuddalore District.

(R13 and R16 deleted as per order dated 26.04.2019 in
WMP.No.11870 of 2019 in WP.No.6649 of 2017 by VKJ and CVKJ)

17 S.Muthamil Arasu,S/o. S.Samyalangaram,
No.182-A, Second Main Road,
Kamakodi Nagar, Pallikaranai,
Chennai – 600 100.

18 C.Ayyasamy, S/o. K.Chellaiya,
12A/1, Soodikudatha Vinayagar Kovil Street,
Srivilliputtur – 626 125,
Virudhunagar District.

19 S.Mariappan, S/o. Late M.Seeniappan,
1/1, Parasakthi Nagar, Courtallam,
Tenkasi Taluk, Tirunalveli District.

...Respondents

(R17 to R19 impleaded as per order dated 16/09/2019 in
WMP.No.25587 of 2019 in WP.No.6649 of 2017 by MMSJ and TKRJ).

[The petitioners are permitted to implead as respondents 4 to 16 in
this writ petition to represent themselves as well as in representative
capacity the other like Assistant Engineers selected pursuant to the
Combined Engineering Services Examination,2006 conducted by third
respondent for appointment as Assistant Engineers in Tamil Nadu
Engineering Services as per order dated 24.10.2017 by CJ & MSJ in
W.M.P. No. 7156 of 2017 in W.P. 6649 of 2017]
W.P. 6649 of 2017]

Prayer: To declare the provisions of Sections 40(1) and 70 of
Tamilnadu Government Servants (Conditions of Service) Act, 2016
and the impugned selection list of the candidate prepared pursuant to
the Combined Engineering Services Examination 2006 conducted by
3rd respondent for to be appointed as Assistant Engineers in
Tamilnadu Engineering Service of Water Resources Organisation
(PWD) as illegal unconstitutional and void ab inito and consequently
to direct the respondents 1 to 3 to fix the inter-se-seniority of the

petitioners and the respondents 4 to 16 and like Assistant Engineers included in the impugned selection list purely based on the marks they obtained in the competitive examination conducted by the third respondent and further to direct the respondents 1 to 3 to treat the petitioner numbers 2,3 and 12 as Assistant Engineers as if notionally appointed on the date on which other Assistant Engineers who scored marks on par with them or lesser than them joined the service and accordingly to fix their Pay on par with them with effect from the said notional pay and revise their pay accordingly and pay the petitioner's arrears of pay therefor and also to direct the third respondent to pay appropriate compensation to the petitioner's 2,3 and 12 for their bleated appointment as may be fixed by this Court within a time frame as this Court deem fit.

(Prayer amended vide order dt 11.07.2019 made in WMP No.389/18 in W.P.No.6649/2017 by MMSJ & MNKJ)

W.P.No.22852 of 2017

Dr.Shankar
S/o.R.S.Palaniselvam
212A/156A C-4, Sri Ram Apartments,
Choolaimedu High Road,
Choolaimedu, Chennai 600 094.

.. Petitioner

Vs.

- 1 The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George, Chennai 600 009.
- 2 The Director of Public Health & Preventive Medicine,
DMS Campus, Teynampet, Chennai 600 006.
- 3 The Director of Medical Service,
DMS Campus, Teynampet,
Chennai 600 006.
- 4 The Director of Medical Education,
Poonamallee High Road, Kilpauk,
Chennai 600 010.

- 5 The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar, Park Town,
Chennai 600 003.
- 6 Dr.R.Arul
Assistant Professor, Department of Nephrology,
Government Rajaji Medical College,
Madurai.
- 7 Dr.P.K. Senthilkumar
Department of Nephrology
Tirunelveli Medical College and Hospital,
High Ground, Tirunelveli 627 011. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Declaration, declaring Section 40(1) of the Tamil Nadu Government Servants (Condition of Service) Act 2016 in so far as it provides for seniority as unconstitutional illegal unreasonable and ultra vires of the Constitution and consequently direct the respondents 1 to 5 to fix the seniority of the petitioner, as above the respondents 6 and 7 in the panel for promotion of Associate Professor promote the petitioner as Associate Professor on the day when the respondents 6 and 7 were promoted, with consequential benefits.

(Prayer amended as per order dated 01.10.2019 in WMP.No.28745 of 2019 in WP.No.22852 of 2017 by MMSJ and TKRJ).

W.P.Nos.34311 & 34312 of 2017

- 1 V.Kumaresan
Assistant Commissioner/ Verification Officer
Hindu Religious & Charitable Endowments
Department, Salem. .. Petitioner
in WP 34311/17
- 1 S.Shivaramkumar
Assistant Commissioner,
Hindu Religious & Charitable Endowments
Department, Tanjore. .. Petitioner
in WP 34312/17

W.P.No.998 of 2017

Vs.

- 1 The Secretary to Government
Law Department, Secretariat, Fort St. George
Chennai-9.
- 2 The Secretary to Government
Personnel and Administrative Department
Secretariat, Fort St. George, Chennai-9.
- 3 The Secretary to Government
Tamil Development Religious Endowments and
Information Depart. (Now) Tourism Culture &
Religious Endowments Dept.
Secretariat Fort St. George,
Chennai- 9.
- 4 Tamil Nadu Public Service Commission
Rep by its Secretary, Broadway,
Chennai-1.
- 5 The Commissioner
Hindu Religious and Charitable Endowment
Department, Uthamar Gandhi Road
Nungambakkam,
Chennai-34.

... Respondents
in both W.Ps.

Prayer: Petitions filed under Article 226 of the Constitution of India praying to declare Section 1(2), Section 40(1) and Section 70 of Tamil Nadu Government Servants (Condition of Service) Act, Act 14 of 2016 as ultra vires and unconstitutional.

W.P.No.7511 of 2018

R.Shanthi
W/o R.Sathiamoorthy,
Plot No. 248, 11th Street C – Sector,
Anna Nagar West, Chennai 40.

.. Petitioner

Vs.

- 1 The Secretary to Government
of Tamil Nadu, Law Department, Secretariat
Fort St. George Chennai 9
- 2 The Secretary
Tamil Nadu Public Service Commission, Chennai
- 3 The Secretary to Government
of Tamil Nadu Personnel and Administrative
Reforms Department Fort St. George,
Secretariat, Chennai 9
- 4 The Commissioner
Milk Production and Dairy Development Department,
Chennai 51. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to declare Section 1(2), Section 40(1) and Section 70 of Tamil Nadu Government Servants (Condition of Service) Act, Act 14 of 2016 as ultra vires and unconstitutional.

W.P.Nos.8718 to 8720 of 2017

W.P.No. 8718 of 2017

- 1 M.Kannadasan
P.A. Joint Commissioner
Arulmighu Meenakshi Sundareswarar Temple,
Madurai. ..Petitioner
in WP 8718/17

Vs

- 1 The Secretary to Government
Law Department,
Secretariat, Fort St. George
Chennai-9.
- 2 The Secretary to Government
Personnel and Administrative Department

Secretariat, Fort St. George, Chennai-9.

- 3 The Secretary to Government
Tamil Develpt. Religious Endowments &
Information Dept. (Now) Tourism culture and
Religious Endowments Dept. Secretariat,
Fort St. George, Chennai – 9.
- 4 Tamilnadu Public Service Commission
Rep. by its Secretary, Broadway,
Chennai-1.
- 5 The Commissioner,
Hindu Religious and Charitable Endowment
Department, Uthamar Gandhi Road,
Nungambakkam, Chennai-34.
- 6 J.Mullai
Assistant Commissioner,
Hindu Religious and Charitable Endowment Department
Arulmigu Meenakshi Sundareswarar Temple, Madurai.
- 7 C.Jothi
Assisstant Commissioner,
Hindu Religious and Charitable Endowment Dept,
Villupuram District.
(R6&7 are impld.as per order
dt.13.4.18 by IBCJ AQJ IN WMP.8306/18
IN WP. 8718/17)

.. Respondents

W.P. No. 8719 of 2017

- 1 J.Bharanidharan,
Assistant Commissioner/Treasurer and Manager,
Palace Devasthanam,
Hindu Religious and Charitable Endowment Dept.,
Tanjore.

..Petitioner

Vs.

W.P.No.998 of 2017

- 1 The Secretary to Government
Law Department,
Secretariat, Fort St. George
Chennai-9.
- 2 The Secretary to Government
Personnel and Administrative Department
Secretariat, Fort St. George, Chennai-9.
- 3 The Secretary to Government
Tamil Develpt. Religious Endowments &
Information Dept. (Now) Tourism culture and
Religious Endowments Dept. Secretariat,
Fort St. George, Chennai – 9.
- 4 Tamilnadu Public Service Commission
Rep. by its Secretary, Broadway,
Chennai-1.
- 5 The Commissioner,
Hindu Religious and Charitable Endowment
Department, Uthamar Gandhi Road,
Nungambakkam, Chennai-34.

.. Respondents

W.P. No. 8720 of 2017

- 1 M.Karthik
Assistant commissioner/Executive Officer
Arulmighu Masaniamman Temple Anaimalai
Coimbatore District

.. Petitioner

Vs.

- 1 The Secretary to Government,
Law Department, Secretariat, Fort St. George,
Chennai-9.
- 2 The Secretary to Government
Personnel and Administrative Department
Secretariat, Fort St. George, Chennai-9.

- 3 The Secretary to Government
Tamil Develpt. Religious Endowments &
Information Dept. (Now) Tourism culture and
Religious Endowments Dept. Secretariat
Fort St. George Chennai-9.
- 4 Tamilnadu Public Service Commission
Rep. by its Secretary, Broadway,
Chennai-1.
- 5 The Commissioner
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Road,
Nungambakkam, Chennai-34. .. Respondents

Prayer in W.P.Nos. 8718 to 8720 of 2017: Petitions filed under Article 226 of the Constitution of India to declare section 1(2) of Tamilnadu Government Servants (condition of Service) Act Act 14 of 2016 as ultra vires and unconstitutional in so far as it relates to retrospective operation of Section 40(1) of Tamilnadu Government Servants (Condition of Service) act is concerned.

W.P.No.10021 of 2018

- 1 E.Emmanuel Jaikar,
S/o Edwin Rajkumar,
Assistant Executive Engineer,
Public Works Department,
Building Maintenance Sub-Division-I,
(Medical Works), Rajiv Gandhi Government
Hospital, Chennai-3.
- 2 P.Govindarajulu,
S/o N.Perialwar,
Assistant Executive Engineer,
Public Works Department,
Building Maintenance Sub-Division-III,
(Medical Works), Egmore,
Chennai-8.
- 3 S.Vijayanand, S/o K.Shanmugam,
Assistant Executive Engineer,

Public Works Department,
Building Construction & Maintenance
Sub-Division, (Medical Works),
Thiruvallur.

- 4 K.S.Senthilkumar, S/o K.Somasundaram,
Assistant Executive Engineer,
O/o. The Chief Engineer,
Public Works Department, WRO,
Chennai Region, Chepauk, Chennai-5.
- 5 B.Arun, S/o C.P.Balasundaram,
Assistant Executive Engineer,
O/o. The Executive Engineer,
Public Works Department,
Environmental Cell Division,
Taramani, Chennai.
- 6 P.Pushpalingam, S/o P.Sambiah,
Assistant Executive Engineer,
O/o. The Executive Engineer,
Public Works Department,
Building Construction Division III,
(Medical Works), Chepauk, Chennai-5.
- 7 P.Balamurugan, S/o K.C.Palanivelu,
Assistant Executive Engineer,
O/o. The Assistant Executive Engineer,
Public Works Department,
Special Project Sub-Division,
Kallakurichi.

.. Petitioners

Vs.

- 1 The Principal Secretary to Government,
Public Works Department,
Fort St. George, Chennai-600 009.
- 2 The Engineer- in- Chief and
Chief Engineer (General),
Public Works Department, Ezhilagam,
Chennai-600 005.

- 3 The Secretary,
Tamil Nadu Public Service Commission,
Fraser Bridge Road, Chennai-600 003.
- 4 Jyoti Basu
Asst Executive Engineer,
Public Works Department, Ezhilagam,
Chennai – 600 005.
- 5 P.Thirumoorthy,
Assistant Executive Engineer,
Public Works Department,
Bhavanisagar Sub Division,
Bhavanisagar.
- 6 K.Subbiah,
Assistant Executive Engineer,
Public Works Department,
WRD, Quality Control Sub Division,
Coimbatore.
- 7 S.Vishwanathan,
Assistant Executive Engineer,
Public Works Department,
Construction and Maintenance Sub Division,
Erode.
- 8 V.Senthur,
Assistant Executive Engineer,
Technical Education Sub Division, Tirupur.
- 9 V.Velmurugan,
Assistant Executive Engineer,
Public Works Department,
C and M Sub Division,
Ariyaloor.
- 10 R.Venkatesh,
Assistant Executive Engineer,
River Conservation Sub Division,

Musiri, Trichy District.

.... Respondents

(R5 to R10 impleaded as per order dated 01.10.2019 in WP.No.24520 of 2019 in WP.No.10021 of 2018 by MMSJ and TKRJ)

Prayer: Petition filed under Article 226 of the Constitution of India, calling for the records of the respondent in connection with the impugned order passed by the 2nd respondent in his proceedings Order No.S2 (2)/ 22009/ 2013 dt.12.1.18 and quash the same and direct the respondents to restore the seniority fixed by the 3rd Respondent in their Gazzette No.12 dated 1.6.2003.

W.P.Nos. 11150 and 11151 of 2018

- 1 K.Ayeratharasu Rajasekharan,
S/o A.Karupiah,
Executive Engineer, Public Works Department,
Buildings Construction Div 1,
Chepauk, Chennai 5.
- 2 M.Kajamohideen
Executive Engineer, Public Works Department,
Ground Water Division, Adaikala Nagar,
Hasthampatti, Salem 636 007.
- 3 R.Vilvanathan
Deputy Chief Engineer,
O/o Plan Formulation WRD PWD,
Chepauk, Chennai 5.

... Petitioners in
WP.No.11150 of 2018

- 1 A.Muthaiya BE,
Executive Engineer, Public Works Department,
No.4/9, 1st Street, Thiaalaiganga Nagar,
Nanganallur, Chennai – 600 061.
- 2 G.Muralidharan, BE.,
Executive Engineer, Public Works Department,

No.114, Gandhi Road, Tirupattur – 635 601,
Vellore District.

- 3 K.Sadhana BE.,
Executive Engineer, Public Works Department,
New No.6, Old No.8, 10th Street,
Nandanam Extension,
Chennai 600 035.

... Petitioners in
WP.No.11151 of 2018

Vs

- 1 The Government of Tamil Nadu
Rep by its Secretary, P & AR Department,
Secretariat, Chennai 9.
- 2 The Engineer in Chief (Building Organisation), &
Chief Engineer Chennai Region, (Buildings) &
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 5.
- 3 The Tamil Nadu Public Service Commission,
Rep by its Secretary,
Frazer Bridge Road, Chennai 3.
- 4 P.Manisekaran BE.
Executive Engineer Public Works Department,
Buildings (C&M) Division,
Nagercoil.
- 5 S.Alagesan BE.
Executive Engineer, PWD,
Technical Education Division,
Madurai.

(R4, R5, R12 deleted as per order dated 26.04.2019 in WMP.No.12874
of 2019 in WP.No.11150 of 2018 and WMP.No.11621 of 2019 in
WP.No.11151 of 2018 respectively by VKJ and CVKJ)

- 6 K.Loganathan BE.

Executive Engineer, PWD,
Sholayar Basin Division,
Valparai, Coimbatore District.

- 7 S.N.Rajendran BE.
Deputy Superintending Engineer /
Executive Engineer PWD,
Buildings (C&M) circle,
Tirunelveli.
- 8 V.Shanmuganathan BE.
Deputy Chief Engineer / Executive Engineer
PWD, O/o.The Chief Engineer PWD,
Trichy Region (Buildings), Trichy.
- 9 M.Krishnan BE.
Executive Engineer PWD,
Parambikulam Dam Division
Parambikulam, Palakad District
Kerala.
- 10 M.Rajamohan BE.
Executive Engineer PWD,
Buildings (C&M) Division,
Medical Works, Thiruvarur.
- 11 K.Ramamoorthy BE.
Executive Engineer PWD,
Buildings (C&M) Division,
Vellore.
- 12 P.Muthupetchi BE.
Executive Engineer PWD.
Monitoring and Quality Control Division,
Madurai.
13. P. Rajendran BE.
Deputy Director / Executive Engineer PWD,
Public Works Staff Training Institute,
Trichy.

- 14 R.Devarajan BE.
Executive Engineer PWD, Division No.6,
Institute for Water Studies,
Taramani, Chennai.
- 15 A.Dhanapal BE.
Executive Engineer PWD, Division No.5,
Institute for Water Studies,
Taramani, Chennai.
- 16 L.Ravichandran BE.
Executive Engineer PWD,
Buildings Maintenance Division,
Medical Works, Chepauk,
Chennai 5
- 17 S.Ramamoorthy BE.
Executive Engineer PWD,
Mining and Monitoring Division,
Trichy.
- 18 V.Raju BE.
Executive Engineer PWD,
Thirumurthi Dam Division,
Udumalpet, Tirupur District.
- 19 G.Ponraj BE.
Executive Engineer PWD,
Planning and Designs Division,
Karaikudi.
- 20 S.Regunathan BE.
Executive Engineer PWD,
Building (C&M) Division,
Nagapattinam.
- 21 S.Prabhakaran BE.
Deputy Director / Executive Engineer PWD,
Hydraulics Division, Institute for Hydrology
& Hydraulics (IHH), Poondi,

Thiruvallur District.

- 22 K.Ashokan BE.
Executive Engineer PWD,
Vennar Basin Division,
Thanjavur.
- 23 K.Thatchanamoorthy BE.
Executive Engineer PWD,
State Project Monitoring Unit (SPMU),
DRIP, Palar Illam, (Near Vivekanandar Illam),
Chepauk, Chennai 5.

.... Respondents

(Respondents 4 to 23 also impleaded to represent in representative capacity of the Assistant Engineers recruited Direct for the year 1985-86 by the third respondent and who are now working as Executive Engineers of Tamilnadu Engineering Service).

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to declare the Tamilnadu Government Servants (Conditions of Service) Act 2016 especially the provisions u/s 40(1), 1(2) 70 and 71 of the said Act the fixation of seniority to the respondents 4 to 23 in the category of Assistant Engineer based on the communal roster points/order of communal rotation stipulated in the selection list prepared by the 3rd respondent for appointment to the category of Assistant Engineer in Tamilnadu Engineering Service and all their consequential promotions pursuant to the same from the category of Assistant Engineer up to the category of Executive Engineer and consequential fixation of seniority in the promoted categories or alternatively, continuing the reservation's effect further even for further promotion from the category of Executive Engineer to the category of Superintendent Engineer and thereafter to the category of the Chief Engineer and all their consequential promotions made pursuant to the said seniority from the category of Executive Engineer to Superintendent Engineer pursuant to order issued in G.O.(D) Nos.311 Public Works Department dated 26.10.2018 and from Superintendent Engineer to Chief Engineer pursuant to the order issued in G.O.(D) Nos.125 Public Works Department dated 30.05.2019 G.O.(D).Nos.128 Public Works Department dated 31.05.2019 and G.O.(D) Nos.164 Public Works Department dated 28.06.2019 as illegal,

unconstitutional, nonest and void ab initio and consequently direct the respondents 1 to 3 to revert the respondents 6 to 23 from the category of Superintendent Engineer or Chief Engineer as the case may be to the category of Executive Engineer and thereafter to reverse the seniority in the category of Executive Engineer in Tamilnadu Engineering Service based on the merit i.e, the marks they scored in the selection by third respondent for initial appointment to the category of Assistant Engineer in Tamilnadu Engineering Service and thereafter to consider them based on the revised seniority for further promotions from the category of Executive Engineer to the category of Superintendent Engineer and thereafter from Superintendent Engineer to Chief Engineer within a time frame.

W.P.No. 18725 of 2018

- 1 D.Vijayakumar
S/o.M.Devendran
Firka Revenue Inspector,
No.25A, Sai Seshadri Flats, Sriram Nagar,
Madambakkam, Chennai 126.
- 2 P.Latha priya
D/o.V.Pandurangan,
Sr. Revenue Inspector,
52 Akshaya Kudiyiruppu,
Gem Nagar, Kanchipuram.
- 3 Y.Ramya, W/o.P.Venkatesan,
Sr.Revenue Inspector A-13
TNHB Quarters, Collectorate, Kanchipuram.
- 4 S.Anjalai
W/o.Udhayamoorthy,
Sr. Revenue Inspector
18 C. Bhagavath Sing Street, N.G.O. Nagar,
Collector Office, Kanchipuram 631 502.
- 5 R.Sathiya
W/o.A. Sudharsan,
Sr. Revenue Inspector,

No. 595 Perummal Kovil Street,
Perambakkam 631 402.

- 6 V.Vijayakumar
S/o.A.P.Vinayagam,
Sr. Revenue Inspector
D. No. 170/95B, Vinayagaburam Street,
Sampathurayan Patti, Nemili Taluk,
Vellur 631 002.
- 7 E.Boopathy
S/o.Eagambaram,
Sr.Revenue Inspector,
2A Bangaru Easappan Street,
Kanchipuram DT 631 501.
- 8 K.Sukumar
S/o.K.Govindarasu,
Firka Revenue Inspector,
No.86, Mariamman Kovil Street, Arasur Village
Vanniya Nallur (Post), Seyyur Taluk,
Kanchipuram Dt 603 401.
- 9 C.Revathi
D/o.Chinnasamy,
Sr. Revenue Inspector
Thiruporur Taluk Office,
Thiruporur, Kanchipuram DT.
- 10 Bhuvaneshwari
W/o.D.Saravanan,
Sr. Revenue Inspector,
45 Kamarajar Street,
Mamallan Nagar Extension,
Kanchipuram.

.. Petitioners

Vs.

- 1 The Government of Tamilnadu

Rep by its Principal Secretary,
P & AR Department,
Fort St. George, Chennai 9.

- 2 The Tamilnadu Public Service Commission
Rep by its Secretary No. 3,
Frezar Bridge Road, Chennai 3.
- 3 The Commissioner for Revenue Administration,
Ezhilagam, Chepauk, Chennai 5.
- 4 The District Collector
Kanchipuram District, Kanchipuram,
- 5 The District Revenue Officer
Kanchipuram District, Kanchipuram.
- 6 R.Jeevitha
Election Deputy Tahsildar, Taluk Office,
Madurantagam, Kanchipuram District 600 119.
- 7 M.Annamalai
Taluk Supply Officer, Taluk Office,
Uthiramerur, Kanchipuram District.
- 8 E.Gobi
Taluk Supply Officer, Taluk Office,
Sriperumpudur, Kanchipuram District.
- 9 M.Puthiyappan
Taluk Supply Officer, Taluk Office,
Chengalpattu, Kanchipuram District.
- 10 A.Syed Ali
HQ Deputy Tahsildar, Taluk Office,
Thirukazukkunram, Kanchipuram District.
- 11 S.Jagadeesh
Election Deputy Tahsildar, Taluk Office,

Kanchipuram, Kanchipuram District.

..Respondents

(Respondents 6 to 11 also represent in the representative capacity the Revenue Assistants in Tamilnadu Ministerial Services in Kanchipuram District, who were recruited direct through Combined Subordinate Services Examination 2009-11 by Tamil Nadu Public Service Commission)

Prayer: Petition filed under Section 226 of the Constitution of India to declare the provisions of the Tamilnadu Government Servants (Conditions of Service) Act 2016 especially Sec.1(2) 40(1) 70 and 71 of the said Act; the seniority list of Revenue Assistants in Kanchipuram District approved by the 5th Respondent in his proceedings Na.Ka.No.28102/2012/A2 dt. 24.08.2017 and published on 09.06.2018 pursuant to the said Act; and the subsequent promotions of the private Respondents and like Revenue Assistants as Deputy Tahsildars by the 4th Respondent in Proceedings Na.Ka.744/2018/A3 dt. 29.06.2018 made pursuant to the said seniority list as unconstitutional illegal nonest and void ab initio and consequently to direct the Respondents 1 to 5 to prepare the revised seniority list of Revenue Assistants in Kanchipuram District fixing the seniority of the Revenue Assistants based on the marks they scored in the CSSE-I Examinations, 2009-2011 conducted by the Tamilnadu Public Service Commission and revert the private respondents and like Revenue Assistants who scored lesser marks than the petitioners in their selection under CSSE-I Examination, 2009-2011 and got promoted as Deputy Thasildar by the 4th respondent in his aforesaid proceeding dated 29.06.2018 and to consider the petitioners for promotion to the category of Deputy Tahsildar notionally from the date on which their juniors were promoted by the 4th respondent in his proceedings dated 29.06.2018 with all consequential service and monetary benefits without insisting the training as Firka Revenue Inspector prescribed under the Rules.

W.P.No.22136 of 2018

1.D.Gnanamurthy,
S/o Dhakshinamurthy,
Executive Engineer, PWD,
66/24A, Chinnu Street,

Nagalapuram, Tindivanam-604 001.
Villupuram District.

2.N.Radhakrishnan,
S/o A.N.Perumal,
Executive Engineer, PWD,
No.14-B, Rajasethupathy Puram,
Adambakkam, Chennai-600 088.

3.A.Pazhanichami,
S/o N.Arumugachamy,
Executive Engineer, PWD,
SE Block No.8, PWD Engineers Quarters,
Thodhunter Nager, Saidapet,
Chennai-15.

4.P.Vedha Arul Sekar, S/o Paul,
88/3, Louies Ammal Street,
Palace Road, Nagarkoil.

.. Petitioners

Vs.

1.The Government of Tamil Nadu,
Rep., by its Secretary,
P & AR Department, Secretariat,
Chennai-9.

2.The Engineer-in-Chief (Building Organization)
& Chief Engineer Chennai Region (Buildings) &
Chief Engineer (General), Public Works Department,
Chepauk, Chennai-5.

3.The Tamil Nadu Public Service Commission,
Rep., by its Secretary, Frazer Bridge Road,
Chennai-600 003.

- 4.P.Manisekaran, BE.,
Executive Engineer, PWD,
Buildings (C&M) Division, Nagercoil.
- 5.S.Alagesan, BE.,
Executive Engineer, PWD,
Technical Education Division, Madurai.
**(R4 and R5 deleted as per order
dated 26.04.2019 in WMP. 11622/
2019 in WP.22136/2018 by VKJ
and CVKJ)**
- 6.K.Loganathan, BE.,
Executive Engineer, PWD,
Sholayar Basin Division,
Valparai, Coimbatore District.
- 7.S.N.Rajendran, BE.,
Deputy Superintending Engineer/
Executive Engineer, PWD,
Buildings (C&M) Circle, Tirunelveli.
- 8.V.Shanmuganathan BE.,
Deputy Chief Engineer/
Executive Engineer, PWD,
O/o The Chief Engineer, PWD,
Trichy Region (Buildings), Trichy.
- 9.M.Krishnan, BE.,
Executive Engineer, PWD,
Parambikulam Dam Division,
Parambikulam, Palakad District,
Kerala.
- 10.M.Rajamohan, BE.,
Executive Engineer, PWD,

Buildings (C&M) Division,
Medical Works, Thiruvarur.

- 11.K.Ramamoorthy BE.,
Executive Engineer, PWD,
Buildings (C&M) Division, Vellore.
- 12.P.Muthupetchi BE,
Executive Engineer,PWD,
Monitoring & Wuality Control Division,
Madurai.
- 13.P.Rajendran, BE.,
Deputy Director/Executive Engineer, PWD,
Public Works Staff Training Institute,
Trichy.
- 14.R.Devarajan, BE.,
Executive Engineer, PWD,
Division No.6, Institute for Water Studies,
Taramani, Chennai.
- 15.A.Dhanapal, BE.,
Executive Engineer, PWD.,
Division No.5, Institute for Water Studies,
Taramani, Chennai.
- 16.L.Ravichandran, BE.,
Executive Engineer, PWD,
Buildings, Maintenance Division, Medical Works,
Chepauk, Chennai-5.
- 17.14.S.Ramamoorthy, BE.,
Executive Engineer, PWD,
Mining & Monitoring Division, Trichy.

- 18.V.Raju, BE.,
Executive Engineer, PWD,
Thirumurthi Dam Division,
Udumalpet, Tirupur District.
- 19.G.Ponraj, BE.,
Executive Engineer, PWD,
Planning & Designs Division, Karaikudi.
- 20.S.Regunathan, B.E.,
Executive Engineer, PWD,
Building (C&M) Division, Nagapattinam.
- 21.S.Prabhakaran BE.,
Deputy Director/Executive Engineer, PWD,
Hydraulics Division, Institute of Hydrology &
Hydraulics (IHH),
Poondi, Thiruvallur District.
22. K.Ashokan, B.E.,
Executive Engineer, PWD,
Vennar Basin Division, Thanjavur.
- 23.K.Thatchanamoorthy, BE.,
Executive Engineer, PWD,
State project Monitoring Unit (SPMU),
DRIP, Palar Illam (Near Vivekanandar Illam),
Chepauk, Chennai-5.

(Respondents 4 to 23 are impleaded to represent in representative capacity all the Assistant Engineers recruited direct for the year 1985-86 by the third respondent and who are now working as Executive Engineers of Tamil Nadu Engineering Service).

PRAYER: W.P.No.22136 of 2018 is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration declaring that the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 especially

the provisions under Section 40(1), 1(2), 70 and 71 of the said Act as illegal, unconstitutional, non-est and void ab initio and consequently, direct the respondents 1 to 3 to revise the seniority in the category of Executive Engineer in Tamil Nadu Engineering Service based on their merit, i.e., the marks, they scored in the selection by third respondent for appointment to the category of Assistant Engineer in Tamil Nadu Engineering Service and accordingly, based on such revised seniority, to consider the Executive Engineers for further promotion to the category of Superintending Engineer and further to the category of Chief Engineer within a time frame as the Court may deem fit and pass such other order or orders as the Court may deem fit and proper on the facts and circumstances of the case.

W.P.No.26442 of 2018

- 1 S. Ramaraj
S/o.T.Subramani,
Revenue Assistant,
Assistant Rationing Officer Circle-3,
Coimbatore South Taluk
Officer Compound, Coimbatore-18. .. Petitioner

Vs.

- 1 The Government of Tamil Nadu
Rep. by its Principal Secretary,
P and AR Department, Fort St. George,
Chennai-9
- 2 The Tamilnadu Public Service Commission
Rep. by its Secretary,
3 Frezar Bridge Road, Chennai-3.
- 3 The Commissioner for Revenue Administration
Chepauk, Chennai-5.
- 4 The District Collector
Coimbatore District, Coimbatore-18.

- 5 The District Revenue Officer
Coimbatore District, Coimbatore-18.
- 6 T. Jayabharathi
Superintendent District Supply and Consumer
Protection Office, Coimbatore- 641018.
- 7 N. Devi
Taluk Supply Officer, Taluk Office,
Kinathukadavu, Coimbatore- 642 109
- 8 M. Umabharathi,
SPL Deputy Tahsildar (Election),
Taluk Office, Madukkarai,
Coimbatore- 641105.

(Respondents 6 to 8 also represent in representative capacity the Revenue Assistants in Tamilnadu Ministerial Services in Coimbatore District who were recruited through Combined Subordinate Services Examination, 2009-2011 by Tamilnadu Public Service Commission)

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to declare the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 especially Sec. 1(2) 40(1) 70 and 71 of the said Act the seniority list of Revenue Assistants in Coimbatore District Approved by the 5th respondent in his proceedings Na.Ka.11308/2016/A3 dated 10.02.2018 pursuant to the said Act and the subsequent promotions of the private respondents and like Revenue assistants as Deputy Tahsildars by the 4th respondent in proceedings in Na.Ka. 20/2017/A2 dated 27.06.2018 made pursuant to the said seniority list as unconstitutional illegal non-est and void ab initio and consequently to direct the respondents 1 to 5 to prepare the revised seniority list of Revenue Assistants in Coimbatore District fixing the seniority of the Revenue Assistants based on the marks they scored in the CSSE-I Examinations, 2009-2011 conducted by the Tamilnadu Public Service Commission and also to revert the private respondents and like Revenue Assistants who scored lesser marks than the petitioner in their selection under CSSE-I

Examination, 2009-2011 and got promoted as Deputy Thasildar by the 4th respondent in his aforesaid proceeding dated 27.06.2018 and to consider the petitioner for promotion to the category of Deputy Tahsildar notionally from the date on which their juniors were promoted by the 4th respondent in his proceedings dated 27.06.2018 with all consequential service and monetary benefits without insisting the training as Firka Revenue Inspector prescribed under the Rules.

W.P.No. 31156 of 2018

- 1 K.Sriraman, S/o. Kalidoss Pillai,
Neivasal Thirumeniar Koil Post,
Thanjavur District.
- 2 Sivaramachandran
S/o. R.Sangli, No. 8 First Floor,
Sethupathy Street,
Sivagangai – 630561.

.. Petitioners

Vs.

- 1 Government of Tamil Nadu
Rep. by its Principal Secretary
(P and AR) Department,
Fort St. George, Chennai – 600009.
- 2 The Tamil Nadu Public Service Commission
Rep. by its Secretary,
No. 3 Freezar Bridge Road,
Chennai – 600003.
- 3 The Secretary to the Government
Department of Finance, Fort St. George,
Chennai - 600009
- 4 The Director of Local Fund Audit
Local Fund Audit Department,
4th Floor Combined Financial Department Buildings,
Chennai – 600108.

.. Respondents

Prayer: Petitioner filed Under Article 226 of the Constitution of India to declare the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 especially section 1 (2) 40 (1) 70 and 71 of the said Act Seniority List by the 4th respondent issued a seniority list of Assistant Inspectors in Local Fund Audit Department vide his memo No. Na.Ka.No. Pa and Ni. II(5)/ 9100/ 2013 dated 05.04.2016 made pursuant to the said seniority list as unconstitutional illegal nonest and void and ab initio and consequently to direct the respondents 1 to 4 to prepare the revised seniority list of Assistant Inspectors in Local Fund Audit Department Fixing the Seniority of the Assistant Inspectors based on the marks they scored of the Assistant Inspectors based on the marks they scored in the CSSE-I Examinations, 2011-2012 and 2012-2013 conducted by the Tamil Nadu Public Service Commission.

W.A.No. 2610 of 2019

1 J.Bharanidharan,
Assistant Commissioner,
Hindu Religious and Charitable Endowment Dept.,
Kancheepuram. .. Appellant

Vs.

- 1 The State of Tami Nadu
Rep., by its Secretary to Government
Tamil Envelopment, Religious Endowments and
Information Department (Now) Tourism
Culture and Religious Endowments Dept,
Fort St.George, Chennai – 09.
- 2 Tamil Nadu Public Service Commission
Rep By Its Secretary, Brodway,
Chennai -1.
- 3 The Commissioner
Hindu Religious and Charitable Endowment Dept,
Uthamar Gandhi Road,
Nungambakkam,
Chennai – 34.
- 4 P.Kavitha Priyadharshini

Deputy Commissioner/Verification,
HR & CE Department,
Sivagangai.

- 5 K.Chelladurai,
Deputy Commissioner/ Executive Officer,
Arulmigu Subramnia Swamy Temple,
Thiruparankundram, Madurai.
- 6 P.R.Kavinitha
Assistant Commissioner,
HR& CE Poosari Nala Variyam,
Chennai.
- 7 J.Mullai
Assistant Commissioner,
HR&CE Department,
Arulmighu Meenakshi
Sundareswarar Temple,
Madurai.

Prayer: Appeal filed under Clause 15 of Letters Patent Act against the order passed in WP.No.14281/2018 dated 20/11/2017 and thereby allow the Writ Petition filed by the Appellant.

For Petitioners : Mr.N.Subramaniyan
in WP.6649/2017 &
22136, 11151, 26442
& 18725 of 2018

For Petitioner : Mr.N.Subramaniyan
in WP.11150/2018 for Mr.G.Saravanan

For Petitioner : Mr.S.N.Ravichandran
in WP.8718 to 8720,
34311, 34312 of 2017
& WA.2610/2019

For Petitioner : Mr.R.N.Amarnath
in WP.22852/2017

For Petitioner : Mr.P.Subburaj
in WP.31156/2018

For Petitioner : Mr.S.R.Raghunathan
in WP.5735/2017

For Petitioner : Mr.T.R.Sathiyamohan
in WP.7511/2018

For Petitioner in WP. : Mr.Venkataramani, S.C., for
998/2017 & 10021/2018 Mr.M.Muthappan

For Petitioner : Mr.K.M.Vijayan for
in WP.1147/2017 M/s K.M.Vijayan Associates

For Respondents : Mr.Vijaynarayan, Advocate General
assisted by
Mr.P.S.Shiva Shanmughasundaram,
Special Government pleader

R1 to R3 in W.P.Nos.1147, 8718 to 8720, 34311 &
34312 of 2017 and W.P.No.22136/2018

R1 & R2 in W.P.Nos.998, 5735 & 6649 of 2017,
11150 & 11151 of 2018

R1 & R3 in W.P.Nos.7511 & 31156 of 2018

R1 & R3 to R5 in W.P.No.26442 of 2018

R2 to 4 in W.P.No.22852 of 2017

R3 & R4 in W.P.No.31156 of 2018

For Respondents : Mr.R.Venkataramani, Senior Advocate
(Supreme Court of India) for
Ms.C.N.G.Niraimathi
For R22 in W.P.No.22136 of 2018
For R3 in W.P.Nos.998, 5735 & 6649 of 2017 and
11150 & 11151 of 2018
For R2 in W.P.Nos.7511, 26442 & 31156 of 2018
For R4 in W.P.Nos. 1147, 8718 to 8720, 34311 &
34312 of 2017
For R5 in W.P.No.22852/2017

For respondents : Mr.M.Maharaja, Special Government
Pleader (HR & CE)
For R5 in W.Ps. 8718 to 8720, 34311 & 34312 of
2017

For Respondents : Mr.Govardhan for M/s Row & Reddy
For R18 & 21 in W.P.No.22136 of 2018
For R7, 12, 19, 21 & 23 in W.P.No.11151 of 2018

For Respondents : Mr.J.Thilagaraj
For R8 to 10, 16, 17 & 20 in W.P.No.22136 of 2018
For R11, 16 & 17 in W.P.No.11150 of 2018
For R9 to R11, 16, 17, 20 W.P.No.11151 of 2018
& 22 in

For Respondents : Mrs.A.Arulmozhi
For R7, 12 & 13 in W.P.No.22136 of 2018
For R6 to 8, 13 to 15, W.P.No.11150 of 2018
18, 19, 21 & 22
For R8, 13, 15 & 18 in W.P.No.11151 of 2018

For 4th Respondent in : Mr.R.Bala Ramesh,

WP.7511 of 2018

Special Government pleader

For Respondents 17 to 19 : Mr.V.Ayyathurai, Senior Counsel for
in WP.6649 of 2017 Mr.K.Bratheesh

For Respondents 9 & 10 : Mr.N.L.Raja, Senior Counsel for
in WP.6649 of 2017 M/s S.Varsha

For 5th Respondent : Mr.V.Anil Kumar
in W.P.No.1147/2017

For Respondents 6 to 8 : Mr.Durai Gunasekaran
in W.P.No.26442 of 2018

For Respondents 6 & 7 : Mr.V.B.Perumal Raj
in W.P.No.8718 of 2017

For Respondents in : Mr.S.R.Raghunathan
W.P.No.998 of 2017

COMMON ORDER

M.M.SUNDRESH, J.

Preface:

Rectitude is a virtue achieved through a righteous conduct and action. It involves distributory justice based on equity providing due and fair share to all sections of people. It is indeed the fundamental duty of

the State to follow and give effect to Rectitude.

Thirukural:

**Provided in its exercise each section gets its fair due,
justice will be deemed the only great virtue.**

The Bible:

**'Do not withhold good from those to whom it is due,
when it is in you power to do it.' .. (Proverbs 3.27)**

The Holy Quran:

**'Do justly, this is nearer to your duty,
your duty to Allah .. (Chapter 6, Rukoo 5)**

2. A roster point system qua seniority deprecated by the Court brought back with anterior date, tracing the power in Article 16(4) of the Constitution of India and thus, removing the basis is under challenge before us. Incidentally, consequential reliefs have also been sought for.

3. Background Facts:

3.1. The Roster Point System in the State of Tamil Nadu has its

own distinctiveness involving its unique characteristics. The 200 point roster is being followed at present leading to mandatory 69% vertical reservation on communal basis. Reservation includes Horizontal and Internal while adopting 69% ratio. 'Vertical Reservation' is with respect to adequate representation on the basis of community, while, 'Horizontal Reservation' would include sub sects and special categories, such as, women, destitute widows, ex-serviceman, physically handicapped and persons studied Tamil medium etc. Incidentally, the State does not choose to follow the mandate of the Apex Court in eschewing creamy layer.

3.2. There is yet another facet in the roster point system. A roster fixed is also taken for the fixation of seniority. Thus, a person selected under the roster will get his seniority determined accordingly as against merit in a single selection process. This was put to challenge in the earlier round of litigation. A Division Bench of this Court in **N.Santhosh Kumar and others Vs. Tamil Nadu Public Service Commission, rep., by its Secretary, Government, Chennai-2 and others (2015 (4) MLJ 281)**, has held that the selected candidates are to be conferred seniority based upon merit and not the roster point. This was

taken on appeal by way of Special Leave Appeal (C) CC.Nos.22094-22098 of 2015, which were also dismissed by an order dated 22.01.2016. To remove the basis of the judgment of the Division Bench as confirmed by the Apex Court as stated supra, Sections 1(2), 40(1), 70 and 71 of Tamil Nadu Government Servants (Conditions of Service) Act 2016, (hereinafter referred to as 'the Act') were introduced, whereby challenging the same, W.P.Nos.5735, 22852, 34311, 34312 of 2017, 7511, 8718 to 8720, 18725, 26442 and 31156 of 2018 have been filed. W.P.No.6649 of 2017 was also filed challenging the fixation of roster point itself, being violative of Rule 22(c) of the General Rules for Tamil Nadu State and Subordinate Services and Section 27(e) of the Act. Rule 22(c) of the General Rules for Tamil Nadu State and Subordinate Services Rule 27(e) of the Act. In W.P.Nos.11150, 11151 and 22136 of 2018 along with the main challenge to the vires of the impugned provisions of the Act, providing seniority to the appointee to the backlog vacancy were also challenged. W.P.No.1147 of 2017 is filed for a mandamus to prepare a seniority list based on merit. In W.P.No.998 of 2017 and 10021 of 2018, the grievance of the petitioners is that neither they have been given the benefit under the procedure followed prior to the first round of litigation nor at present.

3.3. In this connection, we may note that the respondents, after following 22(c) of the Rules, changed their views through the D.O. Letter of the Government dated 20.08.1998 by seeking to follow the decision of the Apex Court in **P.S.Ghalaut V. State of Haryana and others (1995 (5) Supreme Court Cases 625)**. Resultantly, a situation arises, whereby a backward community candidate selected under the said quota as per the roster would become senior to another candidate belonging to the backward community but selected under the general turn. However, this anomaly was set right after the judgment of the Division Bench which took note of the subsequent decision of the Apex Court in **Bimlesh Tanwar V. State of Haryana (2003 (5) Supreme Court Cases 604)**, which overruled the decision in **P.S.Ghalaut case**.

3.4. The subject matter of the writ appeal in W.A.No.2610 of 2019 is with respect to the seniority. The said writ appeal has been filed against the order of the learned single Judge, who while dismissing the writ petition in W.P.No.14281 of 2018, by an order dated 20.11.2017, was pleased to hold that the impugned seniority list has been prepared in tune

with the amended provisions of the Act.

4. As we are dealing with all the issues raised, it would be apposite to dispose of the writ petitions and the writ appeal by a common order.

5. Tamil Nadu State and Subordinate Services Rules:

5.1. Rule 22 (b) and (c) are usefully extracted hereunder.

“(b) The Claims of the members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/Denotified Communities) and the Most Backward Classes/Denotified Communities shall also be considered for the thirty one appointments, which shall be filled on the basis of merit and where a candidate belonging to Scheduled Caste, Scheduled Tribe, Backward Class (other than Most Backward Class/Denotified Communities) or Most Backward Class/Denotified Community selected on the basis of merit, the number of posts reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes, (other than Most Backward Classes/Denotified Communities) or the Most Backward Classes/Denotified Communities as the case may be, shall not in any way be affected.

(c) Selection for appointment under this rule shall be made in the order of rotation specified in Schedule III to this part.”

5.2. Rule 22 of the Tamil Nadu State and Subordinate Services Rules

deals with selection. As per the sub rule (b) of Rule 22, everybody is entitled to be considered under the 'General Turn' notwithstanding his or her community.

5.3. Rule 22(c), in particular, speaks of selection for appointment to be made in the order of rotation specified in Schedule III. Now Schedule III provides for exact roster point. Therefore, this rule makes it clear that selection for any appointment is to be made in the order of rotation as mandated under Schedule III. We may also note that Rule 22 is in *pari materia* to Section 27 of the Act. They accordingly provide for meritorious reserved candidate to choose either a 'general turn' or 'reserved', which is beneficial to him. However, selection in the 'general turn' would not affect the filling up of reserved list.

5.4. Rule 35(a) speaks of seniority. This rule as interpreted by the Division Bench in **Santhosh Kumar case**, does not provide for any room to fix seniority based upon roster point alone, ignoring merit.

6. N.Santhosh Kumar and others Vs. Tamil Nadu Public

**Service Commission, rep., by its Secretary, Government,
Chennai-2 and others (2015 (4) MLJ 281):**

6.1. Factual setting has been depicted with utmost clarity by the Division Bench. Thus, we are relieved of the said exercise and instead, we would like to borrow the narratives of the Bench. This is with respect to the procedure that is being adopted by the respondents. The following paragraphs would be apposite.

48. Rule 22 of the General Rules for Tamil Nadu State and Subordinate Services incorporates the mandate of [Article 16 \(4\)](#). It prescribes that where the Special Rules make the principle of reservation of appointments applicable to any service, class or category of post, selection for appointment thereto shall be made on the basis indicated in Clauses (a), (aa), (ab), (b), (c), (d), (e), (f) and (g) of Rule 22. The principles incorporated in Clauses (a), (aa), (ab), (b), (c), (d), (e), (f) and (g) of Rule 22, in broad terms, without getting into the nitty-gritties, can be summed up as follows:-

(i) The unit of selection for appointment, for the purpose of Rule 22, should be 200, out of which, 36 are to be reserved for Scheduled Castes (including 6 to Arunthathiyars on preferential basis), 2 for the Scheduled Tribes, 53 for the Backward Classes (other

than Muslims), 7 for Backward Class-Muslims, 40 for the Most Backward Classes and 62 to be filled up on the basis of merit.

(ii) Selection for appointment under Rule 22 shall be made in the order of rotation specified in Schedule III.

(iii) Out of total number of appointments reserved as per the preceding Rule, 1% in each category shall be separately reserved for the blind, deaf and orthopaedically handicapped candidates. The appointment should be made in turn and in the order of rotation as specified in Schedule III-A.

(iv) Out of total number of appointments reserved in the categories referred to in Clause (a) of rule 22, 5% in each category shall be reserved for Ex-servicemen, in so far as direct recruitment to Group-C posts are concerned. These appointments are to be made in turn and in the order of rotation as specified in Schedule-III-B.

(v) The claims of the members of the Scheduled Castes, Scheduled Tribes, Backward Classes, Most Backward Classes etc. should also be considered for the appointments that are to be filled up on the basis of merit.

(vi) Where the candidates belonging to the reserved

categories are selected on the basis of merit, the number of posts reserved for such category shall not in any way be affected.

49. Before proceeding further, it should be brought on record that Schedule III to the General Rules for Tamil Nadu State and Subordinate Services, originally contained only a 50 point roster. But it was made into a 100 point roster under G.O.Ms.No.159 P&AR Department, dated 27.6.1994, but with effect from 22.6.1990. By a further amendment made under G.O. Ms.No.55, P&AR Department, dated 8.4.2009, it was made into a 200 point roster.

50. In other words, appointments to State and Subordinate services were made only as per a 100 point roster during the period from 22.6.1990 to 29.4.2009. Though the actual amendment introducing the 200 point roster was made under G.O.Ms.No.55 P&AR Department dated 8.4.2009 with effect from 29.4.2009, the 200 point roster had already been introduced by way of Executive Instructions under G.O.Ms.No.241 P&AR Department dated 29.10.2007. Since the 100 point roster held the field for about 19 years, from June 1990 to April 2009, an amendment was made to Rule 22(c) by inserting an "Explanation". By virtue of this explanation, it was mandated that the vacancies arising

on and from 29.4.2009 should be filled up as per Schedule-III in a 200 point roster and that all selections for appointment shall be started afresh from serial number 1 (or roster point 1) in the said Schedule-III with effect on and from the said date.

51. Before proceeding further, it is our duty to bring on record one more aspect of the rule of reservation which is peculiar to the State of Tamilnadu. Rule 22 of the General Rules makes the roster as well as turns and rotations stipulated in Schedules III, III-A, III-B and IV, spell out the reservation policy of the State in entirety. Therefore, reservation in the matter of appointment is not merely confined to backward classes of citizens but also extended to a few more categories such as physically challenged, women and destitute widows and ex-servicemen. In the year 2010, one more category was included under G.O.Ms.No.145, P & AR Department, dated 30.9.2010, reserving a particular percentage of posts for people who studied in Tamil Medium (known by the acronym PSTM).

52. In other words, reservation in the matter of appointments, is not only for the Backward Classes of citizens (in terms of [Article 16\(4\)](#) of the Constitution) but also for other categories such as physically challenged, Ex-servicemen, women, destitute widows, persons who

studied in Tamil Medium etc. To be precise, the rule of reservation provided for in Rule 22 of the Tamil Nadu State and Subordinate Services read with Schedules III, III-A, III-B and IV, is vertical, horizontal as well as internal. Therefore, the 200 point roster itself is devised in such a manner that all types of permutations and combinations have to be taken care of.

53. To put it differently, Schedule-III provides a 200 point roster generally for the accommodation of the backward classes against different roster points. But Schedule-III-A indicates the rotation and the turn in the roster points against which blind, deaf and orthopedically handicapped candidates among those coming within the general turn, Backward Classes, Most Backward Classes and Scheduled Castes can be fitted. Schedule-III-B indicates the rotation and turn in the roster points within the general turn, Backward Classes, Most Backward Classes, Scheduled Classes and Scheduled Tribes, against which Ex-servicemen are to be accommodated. Similarly, Schedule-IV indicates the rotation and turn in the roster points within the reserved categories against which women are to be accommodated. Some of those vacancies are to be filled up by destitute widows, as per Schedule-IV (iii).

54. Therefore, in essence, all the components of the

Rule of reservation found in Rule 22 and the roster points, rotations and turns provided in Schedule-III, Schedule-III-A, Schedule-III-B and Schedule-IV respectively would show that they are intended:

(i) to ensure that at least 1% of the vacancies goes to the Scheduled Tribes, 18% of the vacancies go to the Scheduled Castes, 20% of the vacancies go to the Most Backward Classes, 26.5% of the vacancies go to the Backward Classes (other than Muslims) and 3.5% of the vacancies go to the Backward Class-Muslims; and

(ii) also to ensure that even while providing 69% of the vacancies to these reserved categories, those who are physically challenged, Ex-servicemen, women and destitute widows and persons who studied in Tamil Medium are accommodated.

Hence, the 200 point roster prescribed in terms of Rule 22(c) of the General Rules for Tamil Nadu State and Subordinate Services is very peculiar in nature.

.....

55.....Therefore, it will be clear from the Schedules III, III-A and III-B alone extracted above, that the rule of reservation is vertical, horizontal as well as internal and the roster presents a complicated table like the Clark's Table in algebra.

56. Having seen the Schedules, let us also take a look at Clauses (a), (aa), (ab), (b) and (c) together with Explanation to Clause (c) of Rule 22. They are as follows:-

"22. Reservation of Appointments -

Where the Special Rules lay down that the Principle of reservation of appointments shall apply to any service, class or category, selection for appointment thereto shall, with effect on and from the 22nd June 1990, be made on the following basis:

(a) The unit of selection for appointment, for the purpose of this rule, shall be two hundred, of which thirty six shall be reserved for the Scheduled Castes including six offered to Arunthathiyars on preferential basis amongst the Scheduled Castes, two for the Scheduled Tribes, fifty three for the Backward Classes (other than Backward Class Muslims, Most Backward Classes, and Denotified Communities), seven for the Backward Class Muslims, forty for the Most Backward Classes and the Denotified Communities and sixty two shall be filled on the basis of merit:

(aa) Out of the total number of appointments

reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment, one percent in each such category shall be separately reserved for the blind, deaf and orthopaedically handicapped candidates and the appointment shall be made in turn and in the order of rotation as specified in Schedule III-A to this part (ab) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment to Group 'C' posts, five percent in each such category shall be reserved for Ex-servicemen and subject to availability of such candidates, the appointment shall be made in turn and in the order of rotation as specified in SCHEDULE III-B to this Part:

(b) The claims of members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes (Other than Most Backward Classes/Denotified Communities) Backward Class Muslims and the Most Backward Classes/Denotified Communities shall also be considered for the thirty one appointments, which shall be filled on the basis of merit and where a candidate belonging to a Scheduled Caste, Scheduled Tribe, Backward

Class (Other than Most Backward Class/Denotified Community) Backward Class Muslims or Most Backward Class/Denotified Community selected on the basis of merit, the number of posts reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes, (other than Most Backward Classes/Denotified Communities), Backward Class Muslims or the Most Backward Classes/ Denotified Communities as the case may be, shall not in any way be affected.

(c) Selection for appointment under this rule shall be made in the order of rotation specified in Schedule III to this part.

Explanation.- The vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule III and all selections for appointment shall be started afresh from serial number one in the said Schedule III with effect on and from the said date."

6.2. The Division Bench, after noting down the judgments of the Apex Court in **P.S.Ghalaut V. State of Haryana and others (1995 (5) SCC 625)** and **Bimlesh Tanwar V. State of Haryana (2003 (5)**

Supreme Court Cases 604), proceeded to hold as follows:

“61. It will be of interest to note that the hypothetical situation taken up by a two member Bench in P.S.Ghalaut where two reserved category candidates are pitted against each other, was actually extracted by the Supreme Court in para 36 of the report in Bimlesh Tanwar and the Supreme Court recorded that the same was not correct. In para 40 of the report the Supreme Court eventually held as follows:-

"40. An affirmative action in terms of [Article 16\(4\)](#) of the Constitution is meant for providing a representation of class of citizenry who are socially or economically backward. [Article 16](#) of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law."

62. What was done in Bimlesh Tanwar was actually a declaration of law. Therefore, the same will have retrospective effect. [In P.V.George vs. State of Kerala](#) [(2007) 3 SCC 557], the Supreme Court held that "the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically". The Supreme Court was conscious of the fact, as seen from paragraph 19 of the report in P.V.George, that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of citizens. But still the Supreme court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be

exercised in the clearest possible term.”

7. Analysis of the Bench:-

7.1. A Meritorious Reserved Category (MRC) candidate accommodated against 'general turn' should not be made to suffer despite being more meritorious. Rule 35(a) cannot be read as resorted to by the respondents overthrowing merit as against roster point qua seniority. The 200 point roster is nothing but a mechanism to fill up vacancies in the respective quota and therefore, cannot be elevated to that of merit when it comes to seniority.

7.2. We find that the Division Bench has taken into consideration the march of law involving reservation. As stated, it has also considered the issue of seniority amongst persons selected under the same process.

7.3. The Special Leave Petitions were dismissed by the Apex Court on 22.01.2016. We would fruitfully refer to the operative portion of the judgment of the Apex Court.

“The fundamental principle which has been applied by the Division Bench in the cases on hand relates to the

question as to what should be the basis for drawing a seniority list. In that context, the Division Bench has noted that at the time when the service Commission drew the list in 2000 the same was in tune with the judgment of this Court in P.S.Ghalaut V. State of Haryana and others, reported in (1995) 5 SCC 625. The Court also found that the said list which was approved by the State Government did not achieve the finality and that ultimately when the seniority list came to be issued on 29.02.2004, by which time the judgment of this Court in Bimlesh Tanwar V. State of Haryana and others, reported in ((2003) 5 SCC 604) had come into effect which reversed the judgment in Ghalaut (supra). The Division Bench, therefore, held that there was no delay in the challenge made to the seniority list. After the emergence of the judgment in Bimlesh Tanwar (Supra), the fundamental principle relating to drawal of seniority list was that it should be based on merit list of selection and that the list drawn based on roster point can have no application for the purpose of seniority list.

As the said fundamental principle was applied by the High Court in passing the impugned judgment, we do not find any merit in these special leave petitions. The special leave petitions are dismissed.

The learned Attorney General for India, appearing for the Tamil Nadu Public Service Commission, raised an issue that with reference to a contra view taken by another Judgment of Madurai Bench of the Madras High Court, at the instance of one of the employee an SLP is pending in this Court. Since the issue is now covered by the decision of this Court in Bimlesh Tanwar (supra), the pendency of the said SLP will be of no consequence as the said SLP should also be covered by the said judgment of this Court, namely, Bimlesh Tanwar (supra)."

Thus, in clear terms, it held that a roster point fixed under the rules can never be a factor for seniority.

8. R.K.Sabharwal Vs. State of Punjab (1995 (2) SCC 745)

Law has been crystallised in this decision that reservation is to be traced to the cadre strength and not a vacancy. Thus, the reservation get detached from the vacancy when it is achieved already qua the cadre strength. Resultantly, a roster providing for reservation ceased to be in operation as long as the requisite number of posts in the cadre are in existence. The following paragraphs of the judgment of the Apex Court depict the aforesaid position.

“5. We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts....." are reserved for members of the Scheduled Caste and Backward Classes. In a lot of 100 posts those falling at serial numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Caste. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of

adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State services and is consistent with the demographic estimate based on the proportion worked out in relation to their populations. The numerical quota of posts is not shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster - points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be short-fall nor excess in the percentage of reservation.

6. The expressions "posts" and "vacancies", often used in the executive instructions providing for reservations, are rather problematical. The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre - strength is

always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation.

10. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100 point roster, 14 posts at various roster points are filled from amongst the scheduled Casts/ Scheduled Tribes candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by December 31, 1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the 1996, 25 more persons belonging to the general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Casts and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster-point it would be open to the State Government to carry forward

the point in a just and fair manner.

11. We, therefore, find considerable force in the second point raised by the learned counsel for the petitioners. We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively.”

9. Indra Sawhney Vs. Union of India (1992 Supp (3) SCC 217)

We need not say much on this celebrated judgment. It deals with various issues on reservation, such as, extent, nature and other factors. This would involve the scope and ambit of Articles 16(1) and 16(4) of the Constitution of India. We do not wish to reproduce the extensive discussion made. However, we would like to place on record the summation.

“859. We may summarise our answers to the various questions dealt with and answered hereinabove:

(1)(a) It is not necessary that the 'provision' under [Article 16\(4\)](#) should necessarily be made by the Parliament/Legislature. Such a provision can be made by the Executive also. Local bodies, Statutory Corporations and other instrumentalities of the State falling under [Article 12](#) of the Constitution are themselves competent to make such a provision, if so advised. (Para 55)

(b) An executive order making a provision under [Article 16\(4\)](#) is enforceable the moment it is made and issued. (Para 56)

(2)(a) Clause (4) of [Article 16](#) is not an exception to Clause (1). It is an instance and an illustration of the classification

inherent in Clause (1). (Para 57)

(b) [Article 16\(4\)](#) is exhaustive of the subject of reservation in favour of backward class of citizens, as explained in this judgment. (Para 58)

(c) Reservations can also be provided under Clause (1) of [Article 16](#). It is not confined to extending of preferences, concessions or exemptions alone. These reservations, if any, made under Clause (1) have to be so adjusted and implemented as not to exceed the level of representation prescribed for 'backward class of citizens' - as explained in this Judgment.

(3) (a) A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of [Article 16\(4\)](#). Among non-Hindus, there are several occupational groups, sects and denominations, which for historical reasons, are socially backward. They too represent backward social collectives for the purposes of [Article 16\(4\)](#). (Paras 61 to 82)

(b) Neither the Constitution nor the law prescribes the procedure or method of identification of backward classes. Nor is it possible or advisable for the court to lay down any such procedure or method. It must be left to the authority appointed to identify. It can adopt such method/procedure as it thinks convenient and so long as its survey covers the entire populace, no objection can be taken to it. Identification of the backward classes can certainly be done with reference to castes among, and along with, other occupational groups, classes and sections of people. One can start the process either with the occupational groups or with castes or with some other groups. Thus one can start the process with the castes, wherever they are found, apply the criteria (evolved for determining backwardness) and find out whether it satisfies the criteria. If it does - what emerges is a "backward class of citizens" within the meaning of and for the purposes of [Article 16\(4\)](#). Similar process can be adopted in the case of other occupational groups, communities and classes, so as to cover the entire populace. The central idea and overall objective should be to consider all available groups, sections and classes in society. Since caste represents an existing, identifiable social group/class encompassing an overwhelming majority of the country's population, one can

well begin with it and then go to other groups, sections and classes. (Paras 83 and 84)

(c) It is not necessary for a class to be designated as a backward class that it is situated similarly to the Scheduled Castes/Scheduled Tribes. (Paras 87 and 88)

(d) 'Creamy layer' can be, and must be excluded. (Para 86)

(e) It is not correct to say that the backward class of citizens contemplated in [Article 16\(4\)](#) is the same as the socially and educationally backward classes referred to in [Article 15\(4\)](#). It is much wider. The accent in [Article 16\(4\)](#) is on social backwardness. Of course, social, educational and economic backwardness are closely inter-twined in the Indian context. (Para 85)

(f) The adequacy of representation of a particular class in the services under the State is a matter within the subjective satisfaction of the appropriate Government. The judicial scrutiny in that behalf is the same as in other matters within the subjective satisfaction of an authority. (Para 89)

(4)(a) A backward class of citizens cannot be identified only and exclusively with reference to economic criteria. (Para 90)

(b) It is, of course, permissible for the Government or other authority to identify a backward class of citizens on the basis of occupation-cum-income, without reference to caste, if it is so advised. (Para 91).

(5) There is no constitutional bar to classify the backward classes of citizens into backward and more backward categories. (Para 92)

(6)(a)&(b) The reservations contemplated in Clause (4) of [Article 16](#) should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main-stream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

(c) The rule of 50% should be applied to each year. It cannot be related to the total strength of the class, category, service or cadre, as the case may be. (Para 96)

(d) Devadasan was wrongly decided and is accordingly overruled to the extent it is inconsistent with this judgment. (Paras 97 to 99)

(7) [Article 16\(4\)](#) does not permit provision for reservations in the matter of promotion. This rule shall, however, have only prospective operation and shall not affect the promotions already made, whether made on regular basis or on any other basis. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion - be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in [Article 12](#) - such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of [Article 16\(4\)](#). If any authority thinks that for ensuring adequate representation of backward class of citizens in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so. (Ahmadi, J. expresses no opinion on this question upholding the preliminary objection of Union of India). It would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration.

c 860..... For the sake of ready reference, we also record our answers to questions as framed by the counsel for the parties and set out in para 26. Our answers question-wise are:

(1) [Article 16\(4\)](#) is not an exception to [Article 16\(1\)](#). It is an instance of classification inherent in [Article 16\(1\)](#). [Article 16\(4\)](#) is exhaustive of the subject of reservation in favour of backward classes, though it may not be exhaustive of the very concept of reservation. Reservations for other classes

can be provided under Clause (1) of [Article 16](#).

(2) The expression 'backward class' in [Article 16\(4\)](#) takes in 'Other Backward Classes', S.Cs., S.Ts. and may be some other backward classes as well. The accent in [Article 16\(4\)](#) is upon social backwardness. Social backwardness leads to educational backwardness and economic backwardness. They are mutually contributory to each other and are intertwined with low occupations in the Indian society. A caste can be and quite often is a social class in India. Economic criterion cannot be the sole basis for determining the backward class of citizens contemplated by [Article 16\(4\)](#). The weaker sections referred to [Article 46](#) do include S.E.B.Cs. referred to in [Article 340](#) and covered by [Article 16\(4\)](#).

(3) Even under [Article 16\(1\)](#), reservations cannot be made on the basis of economic criteria alone.

(4) The reservations contemplated in Clause (4) of [Article 16](#) should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main-stream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

For applying this rule, the reservations should not exceed 50% of the appointments in a grade, cadre or service in any given year. Reservation can be made in a service or category only when the State is satisfied that representation of backward class of citizens therein is not adequate.

To the extent, Devadasan is inconsistent herewith, it is overruled.

(5) There is no constitutional bar to classification of backward classes into more backward and backward classes for the purposes of [Article 16\(4\)](#). The distinction should be on the basis of degrees of social backwardness. In case of such classification, however, it would be advisable - nay,

necessary - to ensure equitable distribution amongst the various backward classes to avoid lumping so that one or two such classes do not eat away the entire quota leaving the other backward classes high and dry.

For excluding 'creamy layer', an economic criterion can be adopted as an indicium or measure of social advancement.

(6) A 'provision' under [Article 16\(4\)](#) can be made by an executive order. It is not necessary that it should be made by Parliament/Legislature.

(7) No special standard of judicial scrutiny can be predicated in matters arising under [Article 16\(4\)](#). It is not possible or necessary to say more than this under this question.

(8) Reservation of appointments or posts under [Article 16\(4\)](#) is confined to initial appointment only and cannot extend to providing reservation in the matter of promotion. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion - be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in [Article 12](#) - such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of [Article 16\(4\)](#). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it do so."

(As pointed out at the end of the paragraph 101 of this judgment, Ahmadi, J. having upheld the preliminary objection raised by Sri Parasaran and others has not associated himself with the discussion on the question whether reservation in promotion is permissible. Therefore, the views expressed in this judgment on the said point are not the views of Ahmadi. J.)

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10. As a fall out, 77th amendment came into being by the introduction of Article 16(4-A) of the Constitution of India on 17.06.1995 providing relief to the persons belonging to Scheduled Caste and Scheduled Tribes.

11. Ajith Singh and others (II) V. State of Punjab and others (1999 (7) Supreme Court Cases 209):

This decision is a fall out of the earlier decisions governing the field. The concern was on the accelerated promotion based upon roster point. Accordingly, it was held that a person promoted on the basis of rule of reservation is not entitled to go over and above the meritorious candidates merely based upon roster point. Incidentally it was held that Article 16(4-A) is only enabling provision and therefore, a roster point promotee belonging to reserved category cannot count his seniority in the promotive category on that basis. Once again, the ambit of Articles 14, 16(1), 16(4) and 16(4-A) of the Constitution of India were discussed at length, on the question of difference between seniority and promotion, it was accordingly held that both are closely interconnected. The following paragraphs are very much relevant for the case in hand.

“22. [Article 14](#) and [Article 16\(1\)](#) are closely connected. They deal with individual rights of the person. [Article 14](#) demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". [Article 16\(1\)](#) issues a positive command that "there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State". It has been held repeatedly by this Court that sub-clause (1) of [Article 16](#) is a facet of [Article 14](#) and that it takes its roots from [Article 14](#). The said sub-clause particularizes the generality in [Article 14](#) and identifies, in a constitutional sense "equality opportunity" in matters of employment and appointment to any office under the State. The word 'employment' being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. [Article 16\(1\)](#) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion" based on equal opportunity and 'seniority' attached to such promotion are facets of fundamental right under [Article 16\(1\)](#):

23. Where promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying with the principle of equal opportunity stated in [Article 16\(1\)](#). For example, if the

promotion is by rule of 'seniority-cum- suitability', the eligible seniors at the basic level as per seniority fixed at that level and who are within the zone of consideration must be first considered for promotion and be promoted if found suitable. In the promoted category they would have to count their seniority from the date of such promotion because they get promotion through a process of equal opportunity. Similarly, if the promotion from the basic level is by selection or merit or any rule involving consideration of merit, the senior who is eligible at the basic level has to be considered and if found meritorious in comparison with others, he will have to be promoted first. If he is not found so meritorious, the next in order of seniority is to be considered and if found eligible and more meritorious than the first person in the seniority list, he should be promoted. In either case, the person who is first promoted will normally count his seniority from the date of such promotion. (There are minor modifications in various services in the matter of counting of seniority of such promotees but in all cases the senior most person at the basic level is to be considered first and then the others in the line of seniority). That is how right to be considered for promotion and the 'seniority' attached to such promotion become important facets of the fundamental right guaranteed in [Article 16\(1\).](#)"

31. Unfortunately, all these rulings of larger Benches were not brought to the notice of the Bench which decided Ashok Kumar Gupta and Jagdish Lal and to the Benches which followed these two cases. In view of the overwhelming authority right from 1963, we hold that both Articles 16(4) and 16(4A) do not confer any fundamental rights nor do they impose any constitutional duties but are only in the nature of enabling provision vesting a

discretion in the State to consider providing reservation if the circumstances mentioned in those Articles so warranted. We accordingly hold that on this aspect Ashok Kumar Gupta, Jagdishlal and the cases which followed these cases do not lay down the law correctly.

39. It is necessary to see that the rule of adequate representation in Article 16(4) for the Backward Classes and the rule of adequate representation in promotion for Scheduled Castes and Scheduled Tribes under Article 16(4A) do not adversely affect the efficiency in administration. In fact, Article 335 takes care to make this an express constitutional limitation upon the discretion vested in the State while making provision for adequate representation for the Scheduled Castes/Tribes. Thus, in the matter of due representation in service for Backward Classes and Schedule Castes and Tribes, maintenance of efficiency of administration is of paramount importance. As pointed in Indira Sawhney, the provisions of the Constitution must be interpreted in such a manner that a sense of competition is cultivated among all service personnel, including the reserved categories.

71. The above decision in Mervyn cannot apply to a case of reservation because the roster in Mervyn was intended to determine seniority while the roster in the cases of reservation under Article 16(4) or Article 16(4A) are not intended to determine seniority but are merely intended to provide "adequate representation" at the promotional level.

89. (iii) Our conclusion: It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc. This applies to reservation quota as much as it applies to direct recruits and promotee cases. If a Court decides

that in order only to remove hardship such roster point promotees are not to face reversions, - then it would, in our opinion be, necessary to hold - consistent with our interpretation of Articles 14 and 16(1) - that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while Courts can relieve immediate hardship arising out of a past illegality, Courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.95 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster point promotees shall have to be reviewed after 10.2.95 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the 'prospectivity' point in relation to Sabharwal."

From the above, we could come to the conclusion that the scope of Articles 16(1) and 16(4) of the Constitution of India have been considered in extenso.

12. Yet another amendment has been introduced to Article 16(4-A) of the Constitution of India by the Amendment Act 2001 to get over the catch-up rule, which we are not concerned with in this proceeding.

13. Bimlesh Tanwar V. State of Haryana (2003 (5) Supreme Court Cases 604):

13.1. In this decision, the Apex Court has held that the decision rendered in **P.S.Ghalaut case** is no longer a good law. It has also followed **Ajith Singh II**. This decision makes the position clear that Article 16(4) of the Constitution of India can only be applied in the case of appointment and therefore, not in the seniority. The following paragraph is apposite.

“40. An affirmative action in terms of [Article 16\(4\)](#) of the Constitution is meant for providing a representation of class of citizenry who are socially or economically backward. [Article 16](#) of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority.

Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law.”

13.2. The Apex Court was pleased to reiterate the settled position of law that seniority is not a fundamental right but only a civil right. In this connection, we may hold, keeping in mind, the settled position that

though seniority is not a fundamental right, to be considered for the seniority in accordance with law certainly stands on a better footing. This would blossom further when the obstruction sought to be made is removed by the Court.

14. M.Nagaraj and others V Union of India (2006 (8) SCC 212)

77th and 85th amendments qua Article 16(4-A) of the Constitution of India were put to challenge in this decision. The Constitution Bench went into all the issues while upholding the constitutional validity of the amendments. Once again, all the earlier judgments have been considered at length. The issue qua Article 16(4) and 16(4-A) and 335 of the Constitution of India has been examined in detail. It was accordingly held that Article 16(4) of the Constitution of India is to be construed in tune with and in the light of the Article 335 of the Constitution of India. It is the view of the Apex Court that Article 16(1) of the Constitution of India is individual and specific whereas Articles 16(4) and 16(4-A) of the Constitution of India are enabling. The concept of equal opportunity would only mean the right to be considered for promotion and therefore, it was not a mere statutory right. Articles 16(4) and 16(4-A) of the Constitution

of India did not contain any fundamental right to reservation. The concept of 'formal equality' and 'proportional equality' was also considered. Thus, it is also a view of the Apex Court that whenever reservation is sought to be made by invoking Articles 16(4) and 16(4-A of the Constitution of India, it should be backed by adequate quantifiable material and data, which is a condition precedent.

15. Tamil Nadu Government Servants (Conditions of Service) Act, 2016:

Before we deal with the impugned provisions, it would be necessary and appropriate to place them on record. They are as follows.

15.1. Section 1(2) :

“Sub-section (1) of Section 40 shall be deemed to have come into force on the 1st January 1955 and all the remaining provisions of this Act shall come into force at once.” (emphasis supplied by us)

This provision creates a deeming fiction pushing the applicability of Section 40(1) of the Act with effect from 01.01.1955.

15.2. Section 40(1):

“40. (1) The seniority of a person in a service, class, category or

grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation specified in Schedule-V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority.”

(emphasis supplied by us)

15.3. Section 40:

This is introduced to remove the basis of the judgment of the Division Bench in **Santhosh Kumar case** by bringing seniority through roster point. Though it might appear to be verbatim reproduction of Rule 35(a) it “adds words” to mean that “rule of reservation” and “the order of rotation” has to be followed. Therefore, the idea of the provision is to remove the basis of the decision rendered by the Division Bench. We may hold that this is for the very same reason the respondents did not find any provision under the Rules for the practice followed over the years by fixing seniority based upon roster point. Incidentally, we may also record that the mistake committed by them, as pointed out by the Division Bench in respect of meritorious candidates coming under the same category has been rectified.

15.4. Section 70 :

“70. Validation -Notwithstanding anything contained in any judgment, decree or order of Court or other authority, the seniority of the candidates selected for appointment to a service, class or category determined on the basis of the roster specified in Schedule-III under clause (c) of General Rule 22 of the Tamil Nadu State and Subordinate Services Rules and anything done or any action taken on the basis of such seniority, during the period commencing on the 1st day of January 1955 and ending with the date of publication of this Act in the Tamil Nadu Government Gazette shall, for all purposes, be deemed to be, and to have always been, validly determined, done or taken in accordance with law, as if this Act had been in force at all material times when such determination of seniority has been made and such thing done or action taken.”
(emphasis supplied by us)

It seeks to protect the roster specified in Schedule -III of Clause (c) of General Rule 22 from 01.01.1955 onwards. However, Rule 22(c) merely says that the selection will have to be made based upon roster point. In this connection we may point out that the selection from the year 2003 is being made after taking note of the judgment in **P.S.Ghalaut's case**. The correspondence between Tamil Nadu Public Service Commission and the Government would indicate that an Amendment to Rule 22(c) was sought for. Though the Government was apprehensive at

the initial stage, it acceded to the request by taking umbrage under the decision in **P.S.Ghalaut's case**. Therefore, admittedly, Rule 22(c) has not been followed and thus, it is only a misconception in the mind of the law makers in seeking to protect it, by validating it, through the introduction of Section 70 of the Act. The procedure that has been followed by the respondents is that "a cut off is fixed for every category" including general turn. We wish to discuss this issue at a later point of time. Suffice it is to state that this procedure would breach 69% reservation, which is fixed already under the roster.

15.5. Section 27 of the Act deals with Reservation in Appointment. Sub sections (d) and (c) of Section 27 of the Act are *in pari materia* provisions found in Rule 22 which we have discussed already. However, selection is to be made in the order of rotation specified in schedule V which once again takes care of 69% reservation (vertical) along with horizontal and internal.

16. B.K.Pavitra and Others Vs. Union of India and Others
(2019 SCC Online SC 694).

16.1. This decision has been rendered after the earlier round of litigation concluded. In this case, Court was concerned with the scope and applicability of Article 16(4-A) of the Constitution of India, which is obviously made for members of Scheduled Castes and Scheduled Tribes. Though the Apex Court did consider the scope and ambit of Article 16(4) of the Constitution of India incidentally, the issue of a roster point having its own peculiarity involving horizontal, vertical and internal reservation to be used for seniority was not available in that case. For arriving at the satisfaction for adequacy of reservation, the exhaustive report of the Committee of experts which formed the basis was duly considered. The Apex Court also took note of the empirical statement of law made in **Indra Sawhney Vs. Union of India(1992 Supp (3) SCC 217)**, and **M.Nagaraj and others V Union of India (2006 (8) SCC 212)**; on the import of Article 16(1) and 16(4) of the Constitution of India. As stated supra, there was no reservation of 69% involved, though the Apex Court reiterated the fact that it should never exceed 50%. However, the issue being one of seniority, the non-adherence of removal of creamy layer was not found to be fatal. Reservation for Scheduled Castes and Scheduled Tribes was made with the maximum cap of 18% and thus, we

hold that the said decision cannot be read like a statute to term it as a binding precedent. We may hasten to add that the views expressed by the Apex Court throws much more light and deeper scrutiny on the concept of equality. This, we would like to discuss it on a later point of time.

16.2. Now, we would only profitably quote the following paragraphs on the question of substantive Vs. formal equality.

“F.Substantive versus formal equality

133. The core of the present case is based on the constitutional content of equality.

134. For equality to be truly effective or substantive, the principle must recognise existing inequalities in society to overcome them. Reservations are thus not an exception to the rule of equality of opportunity. They are rather the true fulfilment of effective and substantive equality by accounting for the structural conditions into which people are born. If Article 16(1) merely postulates the principle of formal equality of opportunity, then Article 16(4) (by enabling reservations due to existing inequalities) becomes an exception to the strict rule of formal equality in Article 16(1). However, if Article 16(1) itself sets out the principle of substantive equality (including the recognition of existing inequalities) then Article 16(4) becomes the enunciation of one particular facet of the rule of substantive equality set out in Article 16(1).

F.I The Constituent Assembly's understanding of Article 16 (4)

(I) Reservations to overcome existing inequalities in society

(a) There is substantial evidence that the members of the Constituent Assembly recognised that (i) Indian society suffered from deep structural inequalities; and (ii) the Constitution would

serve as a transformative document to overcome them. One method of overcoming these inequalities is reservations for the SCs and STs in the legislatures and state services. Therefore, for the members of the Constituent Assembly who supported reservations, a key rationale for incorporating reservations for SCs and STs in the Constitution was the existence of inequalities in society based on discrimination and prejudice within the caste structure. This is evidenced by the statements in support of reservations for minorities by members. For example, in the context of legislative reservations for minorities Monomohan Das noted:-

“... Therefore, it is evident from the Report of the Minorities Committee that it is on account of the extremely low educational and economic conditions of the scheduled castes and the grievous social disabilities from which they suffer that the political safeguard of reservation of seats had been granted to them...”

(b)Prof. Yashwant Rai used similar statements to support reservations for backward communities in employment:-...

“Therefore, if you want to give equal status to those communities which are backward and depressed and on whom injustice has been perpetrated for thousands of years and if you want to establish Indian unity, so that the country may progress and so that many parties in the country may not mislead the poor, I would say that there should be a provision in the constitution under which the educated Harijans may be provided with employment....”

(Emphasis supplied)

(II)Recognition of the insufficiency of formal equality by the Constituent Assembly

135. During the debates on the principles of equality underlying Article 16 (then draft Article 10), certain members of the Assembly recognised that in order to give true effect to the principle of equality of opportunity, the Constitution had to expressly recognise the existing inequalities. For example, Shri Phool Singh noted:

“... Much has been made of merit in this case; but equal merit presupposes equal opportunity, and I think it goes without saying that the toiling masses are denied all those opportunities which a

few literate people living in big cities enjoy. To ask the people from the villages to compete with those city people is asking a man on bicycle to compete with another on a motorcycle, which in itself is the political safeguard of reservation of seats had been granted to them...-absurd. Then again, merit should also have some reference to the task to be discharged...?

(Emphasis supplied)

136. Similarly, P Kakkam stated, -

“... If you take merit alone into account, the Harijans cannot come forward. I say in this house, that the Government must take special steps for the reservation of appointment for the Harijans for some years. I expect the government will take the necessary steps to give more appointments in police and military services also...”

(Emphasis supplied)

137. By recognising that formal equality of opportunity will be insufficient in fulfilling the transformative goal of the Constitution, these members recognised that the conception of equality of opportunity must recognise and account for existing societal inequalities. The most revealing debates as to how the Constituent Assembly understood equality of opportunity under the Constitution took place on 30 November 1948. Members debated draft article 10 (which would go on to become Article 16 of the Constitution). In these debates, some members understood sub-clause (4) (providing for reservations) as an exception to the general rule of formal equality enunciated in sub-clause (1). Illustratively, an articulation of this position was made by Mohammad Ismail Khan, who stated, -

“...There can be only one of these two things--either there can be clear equal opportunity or special consideration. Article 10 says there shall be equality of opportunity, then it emphasises the fact by a negative clause that no citizen shall be discriminated on account of religion or race. It is quite good, but when no indication is given whether this would override article 296 or article 296 is independent of it, we are certainly left in the lurch. What would be the fate of the minorities? [Article 296 stated that special considerations shall be shown to minorities to ensure representation in the services]...”

(Emphasis supplied)

138. Dr B R Ambedkar's response summarises the different conceptions of equality of opportunity that the members of the assembly put forward. Dr Ambedkar argued that the inclusion of

sub-clause (4) was a method of recognising the demand that mere formal equality in sub-clause (1) would be insufficient, and a balance between formal equality of opportunity and the needs of the disadvantaged classes of society was needed. Dr Ambedkar presciently observed: -

“... If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all...

The first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations...

Another view mostly shared by a section of the House is that, if this principle is to be operative--and it ought to be operative in their judgment to its fullest extent--there ought to be no reservations of any sort for any class or community at all...

Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration...

The view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of Article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now--for historical reasons--been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services...”

(Emphasis supplied)

16.3. The decision viewed the constitution as a transformative

instrument. Therefore, it can be addressed to deal with the situation, past, present and future. The following paragraphs would be apposite.

“F.2 The Constitution as a transformative instrument

139. The Constitution is a transformative document. The realization of its transformative potential rests ultimately in its ability to breathe life and meaning into its abstract concepts. For, above all, the Constitution was intended by its drafts persons to be a significant instrument of bringing about social change in a caste based feudal society witnessed by centuries of oppression of and discrimination against the marginalised. As our constitutional jurisprudence has evolved, the realisation of the transformative potential of the Constitution has been founded on the evolution of equality away from its formal underpinnings to its substantive potential.

140. In the context of reservations, the decision in *T Devadasan v. The Union of India*¹³⁴ construed Article 16(4) to be a proviso or an exception to Article 16(1). In a dissent which embodied a vision statement of the Constitution, Justice Subba Rao held:

“26. Article 14 lays down the general rule of equality. Article 16 is an instance of the application of the general rule with special reference to opportunity of appointments under the State. It says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State... Centuries of calculated oppression and habitual submission reduced a considerable section of our community to a life of serfdom. It would be well nigh impossible to raise their standards if the doctrine of equal opportunity was strictly enforced in their case. They would not have any chance if they were made to enter the open field of competition without adventitious aids till such time when they could stand on their own legs. That is why the makers of the Constitution introduced clause (4) in Article 16. The expression “nothing in this article” is a legislative device to express its intention in a most emphatic way that the power conferred thereunder is not limited in any way by the main provision but falls outside it. It has not really carved out an exception, but has preserved a power untrammelled by the other

provisions of the article.”

141. Subsequently, in *N M Thomas*, the Constitution Bench adopted an interpretation of Articles 15 and 16 which recognized these provisions as but a facet of the doctrine of equality under Article 14. Justice K K Mathew observed:

“78...Article 16(4) is capable of being interpreted as an exception to Article 16(1) if the equality of opportunity visualized in Article 16(1) is a sterile one, geared to the concept of numerical equality which takes no account of the social, economic, educational background of the members of Scheduled Castes and Scheduled Tribes. If equality of opportunity guaranteed under Article 16(1) means effective material equality, then Article 16(4) is not an exception to Article 16(1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried viz., even up to the point of making reservation.

142. In his own distinctive style, Justice Krishna Iyer observed:

“139. It is platitudinous constitutional law that Articles 14 to 16 are a common code of guaranteed equality, the first laying down the broad doctrine, the other two applying it to sensitive areas historically important and politically polemical in a climate of communalism and jobbery.

143. This court has set out this latter understanding in several cases including *ABS Sangh (Railways) v. Union of India*.

144. Ultimately, a Bench of nine judges of this Court in *Indra Sawhney* recognized that Article 16(4) is not an exception to but a facet of equality in Article 16(1). Justice Jeevan Reddy delivering the judgment of a plurality of four judges observed:

“741...Article 16(4) is not an exception to Article 16(1) but that it is only an emphatic way of stating the principle inherent in the main provision itself...

In our respectful opinion, the view taken by the majority in *Thomas* [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] is the correct one. We too believe that Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it.

145. Justice Mathew in *N M Thomas* spoke of the need for

proportional equality as a means of achieving justice. Highlighting the notion that equality under the Constitution is based on the substantive idea of providing equal access to resources and opportunities, learned judge observed:

“73. There is no reason why this Court should not also require the State to adopt a standard of proportional equality which takes account of the differing conditions and circumstances of a class of citizens whenever those conditions and circumstances stand in the way of their equal access to the enjoyment of basic rights or claims.

146. Carrying these precepts further Justice S H Kapadia (as the learned judge then was) speaking for the Constitution Bench in Nagaraj observed:

“51...Therefore, there are three criteria to judge the basis of distribution, namely, rights, deserts or need. These three criteria can be put under two concepts of equality—“formal equality” and “proportional equality”. “Formal equality” means that law treats everyone equal and does not favour anyone either because he belongs to the advantaged section of the society or to the disadvantaged section of the society. Concept of “proportional equality” expects the States to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy.—

147. Social justice, in other words, is a matter involving the distribution of benefits and burdens.”

16.4. Incidentally, the other issues governing the competency of the legislation to cure the defect and remove the basis of a judgment and efficiency of the administration qua the reservation were also considered. Since contentions have been raised on these issues, we would like to refer the relevant paragraphs.

“89. The decision in *B K Pavitra I* did not restrain the state from

carrying out the exercise of collecting quantifiable data so as to fulfil the conditionalities for the exercise of the enabling power under Article 16(4A). The legislature has the plenary power to enact a law. That power extends to enacting a legislation both with prospective and retrospective effect. Where a law has been invalidated by the decision of a constitutional court, the legislature can amend the law retrospectively or enact a law which removes the cause for invalidation. A legislature cannot overrule a decision of the court on the ground that it is erroneous or is nullity. But, it is certainly open to the legislature either to amend an existing law or to enact a law which removes the basis on which a declaration of invalidity was issued in the exercise of judicial review. Curative legislation is constitutionally permissible. It is not an encroachment on judicial power. In the present case, state legislature of Karnataka, by enacting the Reservation Act 2018, has not nullified the judicial decision in *B K Pavitra I*, but taken care to remedy the underlying cause which led to a declaration of invalidity in the first place. Such a law is valid because it removes the basis of the decision.

90. These principles have consistently been reiterated in a line of precedents emerging from this Court. In *Utkal Contractors and Joinery (P) Ltd*, this Court held:

“15. ...The legislature may, at any time, in exercise of the plenary power conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to the legislative competence and subject to other constitutional

limitations. The rendering ineffective of judgments or orders of competent courts by changing their basis by legislative enactment is a well-known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision...—

91. (See also in this context : *Bhubaneshwar Singh v. Union of India*, *Indian Aluminium Co v. State of Kerala* (“Indian Aluminium Co”), *Narain Singh* and *Cheviti Venkanna Yadav*).

92. The legislature has the power to validate a law which is found to be invalid by curing the infirmity. As an incident of the exercise of this power, the legislature may enact a validating law to make the provisions of the earlier law effective from the date on which it was enacted (*The United Provinces v. Mst Atiq Begum* and *Rai Ramkrishna v. State of Bihar*). These principles were elucidated in the decision of this Court in *Prithvi Cotton Mills Ltd*. The judgment makes a distinction between a law which simply declares that a decision of the court will not bind (which is impermissible for the legislature) and a law which fundamentally alters the basis of an earlier legislation so that the decision would not have been given in the altered circumstances. This distinction is elaborated in the following extract:

“4. ... Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only

if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal.—

93. In *State of T N v. Arooran Sugars Ltd.*, a Constitution Bench of this Court recognized the power of the legislature to enact a law retrospectively to cure a defect found by the Court. It was held that in doing so, the legislature did not nullify a writ or encroach upon judicial power. The legislature in remedying a deficiency in the law acted within the scope of its authority. This Court held:

“16...It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect.

94. The same principle was formulated in the decision of this Court in *Virender Singh Hooda v. State of Haryana*:

“59. ...vested rights can be taken away by retrospective legislation by removing the basis of a judgment so long as the amendment does not violate the fundamental rights. We are unable to accept the broad proposition... that the effect of the writs issued by the courts cannot be nullified by the legislature by enacting a law with retrospective effect. The question, in fact, is not of nullifying the effect of writs which may be issued by the High Court or this Court. The question is of removing the basis which resulted in issue of such a writ. If the basis is nullified by enactment of a valid legislation which has the effect of depriving a person of the benefit accrued under a writ, the denial of such benefit is incidental to the power to enact a legislation with retrospective effect. Such an exercise of power cannot be held to be usurpation of judicial power...

95. A declaration by a court that a law is constitutionally invalid does not fetter the authority of the legislature to remedy the basis on

which the declaration was issued by curing the grounds for invalidity. While curing the defect, it is essential to understand the reasons underlying the declaration of invalidity. The reasons constitute the basis of the declaration. The legislature cannot simply override the declaration of invalidity without remedying the basis on which the law was held to be *ultra vires*. A law may have been held to be invalid on the ground that the legislature which enacted the law had no legislative competence on the subject matter of the legislation. Obviously, in such a case, a legislature which has been held to lack legislative competence cannot arrogate to itself competence over a subject matter over which it has been held to lack legislative competence. However, a legislature which has the legislative competence to enact a law on the subject can certainly step in and enact a legislation on a field over which it possesses legislative competence. For instance, where a law has been invalidated on the ground that the state legislature lacks legislative competence to enact a law on a particular subject - Parliament being conferred with legislative competence over the same subject - it is open for the Parliament, following a declaration of the invalidity of the state law, to enact a new law and to regulate the area. As an incident of its validating exercise, Parliament may validate the collection of a levy under the earlier law. The collection of a levy under a law which has been held to be invalid is validated by the enactment of legislation by a legislative body - Parliament in the above example - which has competence over the subject matter. Apart from legislative competence, a law may have been declared invalid on the ground that there was a breach of the fundamental rights contained in Part III of the Constitution. In that situation, if the legislature proceeds to enact a new law on the subject, the issue in essence is whether the re-enacted law has taken care to remove the infractions of the fundamental rights on the basis of which the earlier law was held to be invalid. The true test therefore is whether the legislature has acted within the bounds of its authority to remedy the basis on which the earlier law was held to suffer from a constitutional infirmity.

96. The petitioners have placed a considerable degree of reliance on the decision in *Madan Mohan Pathak*, where a law - The Life Insurance Corporation (Modification of Settlements) Act 1976 was enacted by Parliament to render ineffective a settlement which was arrived at between LIC and its employees for the payment of bonus. The law was challenged by the employees. In that case, there was a judgment of the Calcutta High Court which had given effect to the

right of the employees to an annual cash bonus under an industrial settlement, by the issuance of a writ of mandamus. The mandamus bound the parties to the dispute. It was in this backdrop that the Constitution Bench observed that the effect of the mandamus issued by the High Court could not simply be nullified by enacting a law overriding the industrial settlement. This Court held:

“9...Here the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class III and Class IV employees.

97. The decision in *Madan Mohan Pathak* is hence distinguishable from the facts of the present case. The above observations recognized the constitutional position that in the case of a declaratory judgment holding an action to be invalid, a validating legislation to remove the defect is permissible. Applying this principle, it is evident that the decision in *B K Pavitra I* declared the Reservation Act 2002 to be invalid and consequent upon the declaration of invalidity, certain directions were issued. If the basis on which Reservation Act 2002 was held to be invalid is cured by a validating legislation, in this case the Reservation Act 2018, this would constitute a permissible legislative exercise. The grounds which weighed in *Madan Mohan Pathak* would hence not be available in the present case.

98. The decision in *Madan Mohan Pathak* has been adverted to

and clarified in several decisions of this Court rendered subsequently. These include:

(i) *Sri Ranga Match Industries v. Union of India*, where it was held that:

“14. While appreciating the ratio of the said opinions, it is necessary to bear in mind the basic fact that the settlement between the Corporation and its employees was not based upon any statute or statutory provision. Sub-sections (1) and (3) of Section 18 of the Industrial Disputes Act provide merely the binding nature of such settlements; they do not constitute the basis of the settlements. The settlement between the parties was directed to be implemented by the High Court. In other words, it was not a case where the High Court either struck down a statutory provision nor was it a case where a statutory provision was interpreted in a particular manner or directed to be implemented. It was also not a case where the statutory provision, on which the judgment was based, was amended or altered to remove/rectify the defect.

(Emphasis supplied)

(ii) *Indian Aluminium Co*, where it was held that:

“49. In *Madan Mohan Pathak v. Union of India* (1978) 2 SCC 50 : 1978 SCC (L&S) 103 : (1978) 3 SCR 334]...

From the observations made by Bhagwati, J. per majority, it is clear that this Court did not intend to lay down that Parliament, under no circumstance, has power to amend the law removing the vice pointed out by the court. Equally, the observation of Chief Justice Beg is to be understood in the context that as long as the effect of mandamus issued by the court is not legally and constitutionally made ineffective, the State is bound to obey the directions. Thus understood, it is unexceptionable. But it does not mean that the learned Chief Justice intended to lay down the law that mandamus issued by court cannot at all be made ineffective by a valid law made by the legislature, removing the defect pointed out by the court.

(Emphasis supplied)

(iii) *Agricultural Income Tax Officer v. Goodricke Group Ltd.*, where it was held:

“14. We are of the view that *Madan Mohan Pathak case* [(1978) 2

SCC 50 : 1978 SCC (L&S) 103 : (1978) 3 SCR 334] would not apply to the facts in the present case for the simple reason that what has been undone by Section 4-B and Section 78-C is not a mandamus issued by a superior court. What is undone is the very basis of the judgment in *Buxa Dooars Tea Co. Ltd. case* [(1989) 3 SCC 211 : 1989 SCC (Tax) 394] by retrospectively changing the levy of rural employment cess and education cess.

(Emphasis supplied)

99. Madan Mohan Pathak involved a situation where a parliamentary law was enacted to override a mandamus which was issued by the High Court for the payment of bonus under an industrial settlement. The case did not involve a situation where a law was held to be *ultra vires* and the basis of the declaration of invalidity of the law was sought to be cured.”

16.5. Thus, on the clear dictum laid down by the Apex Court, we have no difficulty in holding that the State is well within the power to deal with the efficiency of the administration. Upon considering Article 335 of the Constitution of India and taking note of the earlier decisions, the following statements have been made.

“159. Once we understand “merit” as instrumental in achieving goods that we as a society value, we see that the equation of “merit” with performance at a few narrowly defined criteria is incomplete. A meritocratic system is one that rewards actions that result in the outcomes that we as a society value.

160. For example, performance in standardised examinations (distinguished from administrative efficiency) now becomes *one among many* of the actions that the process of appointments in

government services seeks to achieve. Based on the text of Articles

335, Articles 16(4), and 46, it is evident that the uplifting of the SCs and STs through employment in government services, and having an inclusive government are other outcomes that the process of appointments in government services seeks to achieve. Sen gives exactly such an example.

“If, for example, the conceptualisation of a good society includes the absence of serious economic inequalities, then in the characterisation of instrumental goodness, including the assessment of what counts as merit, note would have to be taken of the propensity of putative merit to lessen - or to generate - economic inequality. In this case, the rewarding of merit cannot be done independent of its distributive consequences.

...

A system of rewarding of merit may well generate inequalities of well-being and of other advantages. But, as was argued earlier, much would depend on the nature of the consequences that are sought, on the basis of which merits are to be characterised. If the results desired have a strong distributive component, with a preference for equality, then in assessing merits (through judging the generating results, including its distributive aspects), concerns about distribution and inequality would enter the evaluation.—

(Emphasis supplied)

161. Thus, the providing of reservations for SCs and the STs is not at odds with the principle of meritocracy. “Merit” must not be limited to narrow and inflexible criteria such as one's rank in a standardised exam, but rather must flow from the actions a society seeks to reward, including the promotion of equality in society and diversity in public administration. In fact, Sen argues that there is a risk to excluding equality from the outcomes.

“In most versions of modern meritocracy, however, the selected objectives tend to be almost exclusively oriented towards aggregate achievements (without any preference against inequality), and sometimes the objectives chosen

are even biased (often implicitly) towards the interests of more fortunate groups (favouring the outcomes that are

more preferred by “talented” and “successful” sections of the population. This can reinforce and augment the tendency towards inequality that might be present even with an objective function that inter alia, attaches some weight to lower inequality levels. (Emphasis supplied)

162. The Proviso to Article 335 of the Constitution seeks to mitigate this risk by allowing for provisions to be made for relaxing the marks in qualifying exams in the case of candidates from the SCs and the STs. If the government's sole consideration in appointments was to appoint individuals who were considered “talented” or “successful” in standardised examinations, by virtue of the inequality in access to resources and previous educational training (existing inequalities in society), the stated constitutional goal of uplifting these sections of society and having a diverse administration would be undermined. Thus, a “meritorious” candidate is not merely one who is “talented” or “successful” but also one whose appointment fulfils the constitutional goals of uplifting members of the SCs and STs and ensuring a diverse and representative administration.

163. It is well settled that existing inequalities in society can lead to a seemingly “neutral” system discriminating in favour of privileged candidates. As Marc Galanter notes, three broad kinds of resources are necessary to produce the results in competitive exams that qualify as indicators of “merit”. These are:

“... (a) economic resources (for prior education, training, materials, freedom from work etc.); (b) social and cultural resources (networks of contacts, confidence, guidance and advice, information, etc.); and (c) intrinsic ability and hard work...”

164. The first two criteria are evidently not the products of a candidate's own efforts but rather the structural conditions into which they are born. By the addition of upliftment of SCs and STs in the moral compass of merit in government appointments and promotions, the Constitution mitigates the risk that the lack of the first two criteria will perpetuate the structural inequalities existing in society.”

16.6. Thus, providing reservation *per se* will not have any bearing on the efficacy of the administration which concept has to be seen on a

larger understanding and philosophy of the social structure with a duty to provide for inclusiveness.

17. Article 16(1) and 16(4) :

'Social Justice is the signature tune of our constitution'

..Krishna Iyer

17.1. However, we do not wish to state anything new on the interpretation of the aforesaid provisions. These provisions have been considered repeatedly and thoroughly by the Apex Court. As stated in **B.K.Pavitra's case-II**, we could gather that there might always be a room for expansion. If Article 16(1) of the Constitution of India is a mother goddess, who assigns different roles to all her creations to create a platform for equality can any facet might as well being read into it? Can we look for the answers from the source itself? Could Article 16(1) be looked into from different perspective? Does Article 16(1), in its avowed object of providing equality, restricts the concept with initial entry and not seniority or promotion? Whether a source can undertake the exercise which is assigned to its facets? Is there any need to seek the power in facet when the source contains all ingredients? If Article 16(1) can be

read along with 16(4) and 16(4-A) of the Constitution of India, what would be the resultant consequence? Does Article 16(2) prohibits such an exercise or merely reiterates that adequacy alone is to be satisfied and therefore, not the power?

17.2. The aforesaid questions came into mind on a reading of **B.K.Pavitra-II**. However, we are conscious of the facts that we are bound by the decision of the Apex Court, particularly, in view of Article 141 of the Constitution of India. Perhaps, over thinking is mere wishful. As stated, the Apex Court took into consideration of the law laid down by the Constitutional Bench in **Indra Sawhney** and others. Judicial discipline and sobriety requires the High Court to fall in line the wisdom of Apex Court. Perhaps, such an interpretation would nullify Article 16(4-A) of the Constitution of India. Thus, we are of the view that the decision rendered in **B.K.Pavitra II** is not a case in point and therefore, the law laid down in **Indra Sawhney's case**, followed in other cases would govern the case in hand.

18. What is not available in the constitution, cannot be deciphered by the Court. Similarly, the Court cannot introduce something which is not

found in the constitution. We only quote the following by **Justice John Marshall Harlan**.

“The Constitution is not a panacea for every blot upon the public welfare, nor should this Court, ordained as a judicial body, be thought of as a instrument of Government, fundamental to which is the premise that in a diffusion of Governmental Authority like the greatest promise that their nation will realize for all its citizens. This Court, limited in function in accordance with that premise, does not serve its high purpose when it exceeds its authority, even to satisfy justified impatience with the slow workings of the political process.”

19. We may note that in the judgments referred supra, a clear interpretation has been given on the question of adequacy. Article 16(4) of the Constitution of India obviously speaks of group reservation. Such a reservation can also be in vertical, horizontal or internal. Thus, it cannot be restricted to a mere communal reservation alone but to be extended to special also. However, as there is no fundamental right involved for reservation, it has to be backed up with empirical data and material. More such extent of quantifiable data is required for a special reservation, viz., horizontal and internal. It is trite that horizontal and internal reservation cannot be compared with a vertical one. Therefore, the extent of material

required for such reservation is much more. Hence, when reservation is sought to be made without adequate material, leading to a satisfaction on the part of the State with respect to the need, the same cannot be sustained in the eye of law being an affront to Article 16 of the Constitution of India as a whole. As Article 16(4) of the Constitution of India is designed to ameliorate social inequality, it cannot be used to enhance it. When we say Article 16(4) of the Constitution of India is an enabling provision any exercise done by an instrumentality of a State has its duty inbuilt in it. We are also conscious of the fact that proportionality and adequacy are not synonymous but two different terms.

20. A classification to become a valid one must be reasonable. Reasonable or otherwise, it should pass the test of arbitrariness and unreasonableness. Thus, a mere discrimination *per se* would not affect a classification, but when becomes unreasonable and arbitrary, it shall be declared so. A negative or reverse discrimination is also against social justice.

21. Prospective, retrospective and retroactive:

Generally, a statute is to be understood as prospective. However,

there may be cases where it can be made retrospective or retroactive either by express or implied terms. Nature of the statute will have a bearing on its understanding qua its applicability either prospective or otherwise. There is a very thin line between a retrospective or retroactive enactment. A retrospective enactment *per se* cannot be meant to take away a right, whereas retroactive is. Application of the principle would also depend on the statute being either procedural or substantive. Merely because a statute was made to apply from the earlier date, it would not become retroactive. The line between retroactive and retrospective enactment has become very thin. Today, we used both phrases interchangeably. To put it differently, when a right available at an earlier point of time has been exercised, any attempt to take away the same would amount to retroactive enactment. A mere existence of a right stands on a different footing. We may only quote the interpretation given by the legal luminary **Driedger's** approach to the distinction between 'retroactive' and 'retrospective' statutes.

“A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective but it imposes new results in respect of a past event. A retroactive statute operates backwards. A retrospective statute operates forwards but looks backwards in

that it attaches new consequences for the future to an event that took place before the statute was enacted. A retroactive statute changes the law from what it was; a retrospective statute changes the law from what it otherwise would be with respect to a prior event.”

Thus, the difference between 'retrospective' and 'retroactive' is only terminological and not contextual. Therefore, mere alteration of existing rights which were available at an anterior point of time would not make an enactment as retrospective. In this connection, we may usefully refer the following paragraphs of the Apex Court in **Swiss Ribbons Pvt. Ltd., and another V. Union of India and others (Writ petition(Civil) No.99 of 2018 dated 25.01.2019)**.

“64. It is settled law that a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing (See State Bank's Staff Union (Madras Circle) V. Union of India and Ors., [(2005) 7 SCC 584 (at paragraph 21)].”

22. Removing the Basis of a Decision:

While a judgment cannot be removed through a legislation, its basis can be. A removal of a judgment *per se* would certainly become unconstitutional. However, when there exists a defect which occasioned

the judgment, it can be removed accordingly by a valid enactment, taking away the basis of judgment. Therefore, there is a marked difference between the two. When a defect is pointed out, it can be cured. When it is done so, the action taken becomes valid. Such an action can also be from a fixed date. We are not inclined to dwell much on this as **B.K.Pavitra-II** has dealt with this issue threadbare. However, we may add a caveat that such an exercise can only be permissible, subject to its constitutionality.

23. Vested Right:

Right to promotion is obviously a statutory right as held by the Apex Court. Right to be considered would certainly be a constitutional right. A contractual right or a common right or a statutory right can be taken away from an anterior date. However, in a case where such a right has blossomed into a positive one enuring to the benefit of a person already, then the same cannot be taken away lightly. In such a case, such a right gets vested. Therefore, in a case where a promotion has been given effect to and thereafter sought to be taken away by the introduction of an enactment, then such a right having become vested, cannot be taken

away. We do not wish to multiply the judgments on this point except by quoting the decision of the Apex Court in **T.R. Kapur Vs. State of Haryana (1986 Suppl. Supreme Court Cases 584)**.

24. Impugned Act not being under Article 31(B) of the Constitution of India:

Certainly, there is a constitutional protection to an enactment which is housed in the ninth Schedule. However, for removing the basis, no such requirement is needed. This is a second round of litigation, which we are dealing with. A new challenge at the time of argument by raising a ground, not raised on the earlier round, cannot be entertained. All the petitioners have accepted the 200 point roster. They have not questioned it earlier. Therefore, the principle of delay, laches and acquiescence would get attracted. Some of them were also beneficiaries of the 200 point roster. A beneficiary of the selection grade as per roster point cannot challenge it later, though the issue qua seniority stands on a different footing. We make the above observations keeping in mind the challenge on the 200 point roster. Therefore, the 200 point roster adopted in selection cannot be questioned. We make it clear that it may be

questioned with respect to the post sought for. For example, a candidate can challenge it on the ground that he ought to have been considered for better post as against the one assigned to him.

25. Fixation of seniority based upon cut off Mark in each category:

We have discussed already the scope of Rule 22(c). It is sought to be sustained through Section 70 of the Act. The procedure, which is not contemplated, contrary to Rule or Act, cannot be followed to the detriment of others. Such a procedure would not only be altering the right of one who is otherwise entitled to be considered, but also unconstitutional as it provides for reservation excess of even 69%. At the cost of repetition, 200 point roster itself has been modelled and formulated to give effect to 69% reservation. A backward community person can seek to fix himself in the reserve quota though obtained higher marks to be eligible for general turn in a given case. This is for the reason that it would be beneficial for him to be considered under the reserve quota in view of the peculiarities involved in the 200 point roster. The respondent cannot follow a system by fixing a cut off mark for each category and thus, prevent a meritorious

candidates for being considered for the post under 'general turn'. Take a case of a Backward Community candidate who has got higher mark than a Most Backward community candidate, but does not get a seat in the 'general' turn filled up with the latter. This is totally arbitrary and illegal. We are not concerned with the filling up of the 'reserved category', but of 'general turn' category. When it comes into 'general turn' every candidate is entitled to contest as stipulated both under the Rules and the impugned Act over which there is no quibble. However, it cannot be stated that a candidate belonging to the Most Backward Community is entitled to be considered in 'general turn', when otherwise not having requisite marks, consequent to a decision made by a candidate in the 'general turn' though belonging to the Most Backward Community, coming into the reserved quota. This issue has been dealt with by the Apex Court in **Ritesh R. Sah V. Y.L.Yamul (1996 (3) Supreme Court Cases 253)**, wherein it has been held that the said principle cannot be applicable to the selection process involving public employment.

26. In a subsequent judgment of the Apex Court in **Union of India V. Ramesh Ram and others (2010 (7) Supreme Court Cases 234)**,

it has been observed as under.

“9(2) While making service allocation, the candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies by the Government if by this process they get a service of higher choice in the order of their preference.”

The aforesaid decision was subsequently followed in **Samta Aandolan Samiti Vs. Union of India (2014 (14) Supreme Court Cases 745)**.

27. In a recent decision in **Tripurari Sharan and another V. Ranjit Kumar Yadav and others (2018 (2) Supreme Court Cases 656)**, the Apex Court , taking note of the aforesaid judgments, has held as follows:

“16. In Ramesh Ram (supra), this Court has seemingly and intrinsically arrived at a diametrically opposite decision from Ritesh R. Sah (supra). Indeed, the aggregate reservation should not

exceed 50% of the available vacancies. While we are undoubtedly bound by Ramesh Ram (supra), the very judgment justified why it is so different from Ritesh R. Sah (supra). It categorically held that there is a distinction between selection and admission of PG candidates as in Ritesh R. Sah (supra), and selection and appointment of UPSC candidates as in Ramesh Ram (supra). While in postgraduate admissions, the results will grant all the candidates the same benefit

irrespective of rank (i.e., admission in medical colleges), the results in UPSC selections give varying benefits to varying rank-holders, as the allocation of services is based on rank. This Court thus held that in case of UPSC selections, the general category seat vacated by a MRC to occupy a reserved category seat, must be filled up by candidates from the general category. It also held that such MRC should be counted in the reserved category (and not in the general category, as Ritesh R.Sah (supra) did) in order to prevent the reservation cap from exceeding 50%. It would be beneficial to look into Paragraphs 31, 32, 66 and 67 of Ramesh Ram (supra) for the purpose of distinguishing the said matter from the matter on hand and they read as follows:

“31. The respondents have also placed strong reliance on this Court's decision in Ritesh R. Sah v. Dr.Y.L.Yamul (1996) 3 SCC 253). The question in that case was whether a Reserved Category candidate who is entitled to be selected for admission in open competition on the basis of his/her own merit should be counted against the quota meant for the Reserved Category or should he be treated as a general candidate. The Court reached the conclusion that when a candidate is admitted to an educational institution on his own merit, then such admission is not to be counted against the quota reserved

for Scheduled Castes or any other Reserved Category. However, it is pertinent to note that this decision was given in the context of admissions to medical colleges ...”

“32. There is an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in the UPSC examinations since the latter examination is conducted for filling up vacancies in the various civil services. In the former case, all the successful candidates receive the same benefit of securing admission in an educational institution. However, in the latter case there are variations in the benefits that

accrue to successful candidates because they are also competing amongst themselves to secure the service of their choice. For example, most candidates opt for at least one of the first three services [i.e. Indian Administrative Service (IAS), Indian Foreign Service (IFS) and Indian Police Service (IPS)] when they are asked for preferences. A majority of the candidates prefer IAS as the first option. In this respect, a Reserved Category candidate who has qualified as part of the general list should not be disadvantaged by being assigned to a lower service against the vacancies in the General Category especially because if he had availed the benefit of his Reserved Category status, he would have got a service of a higher preference. With the obvious intention of preventing such an anomaly, Rule 16 (2) provides that an MRC candidate is at liberty to choose between the general quota or the respective Reserved Category quota.”

“66. The decision in Anurag Patel in turn referred to the earlier decision in [Ritesh R. Sah v. Dr. Y.L. Yamul](#). However, we have already distinguished the judgment in Ritesh R. Sah. That decision was given in relation to reservation for admission to post graduate medical courses and the same cannot be readily applied in the present circumstances where we are dealing with the examinations conducted by UPSC. The ultimate aim of civil services aspirants is to qualify for the most coveted services and each of the services have quotas for reserved classes, the benefits of which are availed by MRC candidates for preferred service. As highlighted earlier, the benefit accrued by different candidates who secure admission in a particular educational institution is of a homogeneous nature. However, the benefits accruing from successfully qualifying in UPSC examination are of a varying nature since some services are coveted more than others.

67. The order of CAT is valid to the extent that it relied on the ratio propounded by this Court in [Anurag Patel v. U.P. Public Service Commission](#). Even though that decision had in turn relied on the verdict of this Court in [Ritesh R. Sah v. Dr. T.L. Yamul](#), the latter case is distinguishable from the present case with respect to the facts in issue. However, we cannot approve of the conclusions arrived at in the Central Administrative Tribunal order as it failed to take

note of the unique characteristics of UPSC examinations.”
(Emphasis supplied)

Hence it is amply clear that, the Constitution Bench makes a distinction between two types of selections, i.e., selection to medical colleges through a common entrance test, and selection to posts in services through the UPSC examination.

19. Ritesh R. Sah (supra) was subsequently followed in [Samta Aandolan Samiti v. Union of India](#), (2014) 14 SCC 745 wherein this Court observed thus:

“22. No doubt, while doing so, the Court in Ramesh Ram case was of the opinion that such meritorious reserved candidates (MRC) who avail the benefit of Rule 16(2) of the Civil Services Examination Rules (which permitted such inter-se transfer) and are eventually adjustment in the reserved category, they should be counted part of reserved category for the purpose of computing aggregate reservation quota. However, it was categorically stated that this proposition applies when there is an appointment to a service under the State and categorically excluded the

cases of admission in educational institutions. In so far as admission in educational institutions is concerned, such a MRC was to continue to be treated as belonging to general category, which position he attained because of his initial merit. The Court noted that this was so held in [Ritesh R. Sah v. Dr. Y.L. Yamul](#) (1996) 3 SCC 253.”
... “24. Since, we are concerned with the admission to medical course, aforesaid judgment squarely applies to the present case. Thus we find that neither upper limit of 50% reservation is breached, nor any rights of the Petitioners are violative or the action of the Respondents have been to their prejudice in any manner. Thus, we do not find any merit in the present petition, which is accordingly dismissed. No costs.” (Emphasis supplied).

26. i) A MRC can opt for a seat earmarked for the reserved category, so as to not disadvantage him against less meritorious reserved category candidates. Such MRC shall be treated as part of the general

category only.

ii) Due to the MRC's choice, one reserved category seat is occupied, and one seat among the choices available to general category candidates remains unoccupied. Consequently, one lesser-ranked reserved category candidate who had choices among the reserved category is affected as he does not get any choice anymore. To remedy the situation i.e. to provide the affected candidate a remedy, the 50th seat which would have been allotted to X – MRC, had he not opted for a seat meant for the reserved category to which he belongs, shall now be filled up by that candidate in the reserved category list who stands to lose out by the choice of the MRC. This leaves the percentage of reservation at 50% undisturbed.

27. We reiterate that, 50% reservation rule should not be breached under any circumstance.

28. The High Court has succinctly dealt with the issue as well as the case law on the point. It has rightly held that Ritesh R. Sah (supra) governs admissions in medical institutions. We see no reason to interfere. Appeals are accordingly dismissed. No order as to costs.”

28. From the above, two principles emerge for our consideration.

The first principle is that the judgment rendered in **Ritesh R. Sah V. Y.L.Yamul (1996 (3) Supreme Court Cases 253)** governs the admissions in medical institutions. The Apex Court also took note of the subsequent decision rendered in **Union of India V. Ramesh Ram and others (2010 (7) Supreme Court Cases 234)**, by saying that it was applicable to service matters which we are dealing with at present. Secondly, it has been categorically held that 50% reservation cannot be breached. Now, if the procedure as contemplated by the respondent is

followed, it would certainly breach 69%, apart from the fact which we are dealing with the appointment to the posts. Therefore, the irresistible conclusion is that, when a candidate, who is otherwise entitled to be considered under reserve quota is also so meritorious to be considered and fixed in the general turn and thereafter he chooses to come to the reserved quota for better benefit, the vacancy which has arisen in the general turn will have to be fixed only based upon merit alone. Otherwise, it would amount to reverse discrimination.

29. Backlog Vacancies:-

Backlog vacancies are meant to be filled up for a particular year but not actually done. If they are not filled up, they can be carried forward along with the vacancies arising in the next year. Merely because, selection has been made for the subsequent year by way of a common process, it cannot be stated that a reserved candidate who comes under the backlog vacancy would also be a part of it. The vacancies should have been filled up for the earlier year. It is only for convenience sake they were filled up subsequently. We may note that by not filling up of the vacancies in the reserved category, the principal object of giving adequate

representation would get lost. Thus, a candidate selected in the subsequent year vacancy cannot be made to contend that the candidates selected for the previous year though subsequently, by way of filling up the backlog vacancy are to be treated on par.

30. Delay, Laches and Acquiescence:

These principles are all not of absolute law but of practice and prudence. In service jurisprudence, the persons, who slept over their rights cannot be allowed to come out of slumber after years to lay a challenge, especially when a right becomes accrued. When promotions take place, one cannot contend that in the erstwhile cadre he should have been made as a senior. The same thing will apply to the principle governing backlog vacancies. One has to see public interest also especially, when a challenge is made on the ground of backlog vacancies belatedly. When posts were filled up earlier, obviously, there would not have been any adequate representation to reserved posts for want of candidates. Therefore, it is nothing but proper for the said candidate to join with the earlier group though he may not get any preference over the others nor can he rely upon the provisional roster.

31. Manifest Arbitrariness:

An act can be struck down, if there exists an element of '*manifest or extreme arbitrariness*'. Therefore, any enactment exhibiting a manifest legislative arbitrariness being excessive and disproportionate would harm Article 14 of the Constitution of India and therefore, the Court if finds it so, can declare accordingly. Though the above said principle is quite settled, we would like to reiterate it through the celebrated judgment in the case of **Joseph Shine v. Union of India (2019 (3) SCC 39)**.

"26. Thereafter, our learned Brother referred to the authorities in State of Mysore v. S.R.Jayaram, Indira Nehru Gandhi v. Raj Narain, E.P. Royappa v. State of T.N., Maneka Gandhi v. Union of India, A.L.Kalra v. Project & Equipment Corp. of India Ltd., Ajay Hasia v. Khalid Mujib Sehravardi, K.R.Lakshmanan v. State of T.N. and two other Constitution Bench judgments in Mithu v. State of Punjab and Sunil Batra v. Delhi Admn. and, eventually, came to hold thus:(Shayara Bano case, SCC p.87, para 82).

"82. It is, therefore, clear from a reading of even the aforesaid two Constitution Bench judgments that Article 14 has been referred to in the context of the constitutional invalidity of statutory law to show that such statutory law will be struck down if it is found to be "arbitrary".

And again:(SCC p.99, para 101)

101. ... The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

32. Fairness in action :

Any action of an instrumentality of a State should confine to the element of fairness. Fairness is ante-thesis to arbitrariness. When such action amounts to extreme unfair action, the power of judicial review is certainly to be exercised even when involves a provision of a statute. Hence, when the reservation exceeds 69%, and when the concept of creamy layer has not been followed, apparently as a matter of policy sans material followed for decades, interference would be warranted at the hands of the Court. We may quote profitably the following passage from the decision of the Apex Court in **Puravankara Projects Ltd., V. Hotel**

Venus International (2007 (10) SCC 33).

“33. Just as the Principles of Natural Justice ensure fair decision where function is Quasi-Judicial, the Doctrine of Fairness is evolved to ensure fair action when the function is administrative.”

33.Judicial restraint, Discipline, Humility and Accountability:

Judicial restraint, Discipline, Humility and Accountability are basic virtues which the Court is required to possess. Courts are not exempted from accountability in their functioning. After all, the endeavour of the judiciary is on the uniformity of decisions whether of the Court of first instance or thereafter. One has to respect the higher Forum while consciously avoiding judicial adventurism. Such discipline and restraint are the fundamental qualities required to be maintained in the administration of justice. The aforesaid conclusion of us is supported by the decision of the Apex Court in the case of **State of Uttar Pradesh and Others v.**

Anil Kumar Sharma and Another (2015 (6) SCC 716):

"21. In State of U.P. v. Jeet S. Bisht, this Court observed as under:(SCC pp.611-12, para 49)

"49. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this in

two ways. First, judicial restraint not only recognises the equality of the other two branches with the judiciary, it also fosters that equality by minimising inter-branch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other coequal branches. In contrast, judicial activism's unpredictable results make the judiciary a moving target and thus decreases the ability to maintain equality with the co-branches. Restraint stabilises the judiciary so that it may better function in a system of inter-branch equality."

22. In *A.M.Mathur v. Pramod Kumar Gupta* this Court observed that judicial restraint and discipline are necessary to the

orderly administration of justice. The duty of restraint and the humility of function has to be the constant theme for a Judge, for the said quality in decision-making is as much necessary for the Judges to command respect as to protect the independence of the judiciary. Para 13 of *A.M.Mathur v. Pramod Kumar Gupta* reads as under:(SCC pp.538-39)

"13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our Judges. This quality in decision-making is as much necessary for Judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before

the court as well to other coordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the Judge has failed in these qualities, it will be neither good for the Judge nor for the judicial process."

23. No person, however high, is above the law. No institution is exempt from accountability, including the judiciary. Accountability of the judiciary in respect of its judicial functions and orders is vouchsafed by provisions for appeal, revision and review of orders."

34. Heard the submissions made by the learned Senior counsel and the learned counsel appearing for the petitioners in all these writ petitions and the learned Advocate General, learned Senior counsel, learned Special Government Pleader and learned counsel appearing for the respective respondents and perused the written submissions filed.

35. Submissions of the learned counsel for the Petitioners:-

35.1. Though various submissions have been made on the two sets of writ petitions classified broadly, we would like to assimilate them as the submissions of the petitioners. We may note that in some of the writ petitions only Section 1(2) of the Act has been challenged as against Sections 40(1) and 70 of the Act.

35.2. The judgment of the Division Bench is based upon the declaration made by the Apex Court in **Bimlesh Tanwar's case** and therefore, the same cannot be removed by reintroducing roster point system for the purpose of seniority. Rule 35-a of the Tamil Nadu State and Subordinate Service Rules was introduced in exercise of the power granted under Article 309 of the Constitution of India and therefore, there is not much difference between the impugned provisions and the said rule. There is no power or authority for the introduction of the amendments sought to be impugned since Article 16(1) or 16(4) of the Constitution of India do not authorise so. There is no quantifiable date available and considered in introducing the impugned proceedings with effect from 01.01.1955. Amendments made are nothing but an attempt to ignore and deny the benefits conferred by the judgment. There is no fundamental right involved in reservation. The respondents cannot make a classification solely on the basis of caste alone for fixing the seniority as that would be hit by Article 16 of the Constitution of India. The respondents have not invoked Article 16(4-A) of the Constitution of India but tried to trace the power under Article 16(4) of the Constitution of India, which is

impermissible. Rights created and vested can never be taken away through the impugned provisions. Rule 22(c) of the Tamil Nadu State and Subordinate Service Rules corresponding to Section 27(d) of the Act only facilitates the selection through the roster point alone and therefore, no cut off can be fixed starting from 'general turn'. The procedure adopted by the respondents would exceed 69% reservation even if one accepts that the same is permissible in law. There is no difference between the

seniority and promotion as both are inter linked. The seniority sought to be given is not only for vertical reservation, but also for other categories called special reservation which include horizontal and internal. Rule 35(a) has been correctly interpreted by the Division Bench in **Santhosh Kumar case** cited supra. The mistake was only with respect to the implementation on a wrong understanding by the respondents and therefore, even by the amended provisions, the benefits conferred cannot be taken away. The impugned provisions are mere statutory amendments and not constitutional amendments protected by the Article 31(b) of the Constitution of India and in not having been placed in the IX Schedule.

35.3. In W.P.Nos.998 of 2017 and 10021 of 2018, Mr.Venkatramani, learned Senior Counsel representing for Mr.M.Muthappan, learned counsel for the petitioners, would submit that the petitioners would stand to lose pursuant to the order of the Division Bench and also through the impugned provisions. They were earlier placed higher on the basis of roster point seniority along with the fixation in the same cadre on the principle laid down in **P.S.Ghalaut case**. Now, the respondents have revised the roster points in tune with the decision of **Bimlesh Tanwar case**. Therefore, either they should be given the benefit as available earlier or as ordered by the Division Bench, which was confirmed by the Apex Court.

35.4. On the individual writ petitions filed, the learned counsel for the petitioners would submit that a more meritorious candidate, who is otherwise eligible to be considered under the 'general turn' was not considered. When a candidate though belonging to the 'reserved category', but entitled to be considered under the 'general turn', chooses the earlier one being beneficial to him, another reserved candidate having

lesser mark has been selected in the 'general turn' over looking more meritorious candidates, which cannot be sustained in the eye of law. While there is no difficulty in filling up the backlog vacancies, the law laid down by the Apex Court in **R.K.Sabharwal case** will have to be followed. Though there is a considerable delay, it cannot be put against the petitioners since they are aggrieved only now. The submissions made are sprinkled with the following decisions:

- 1.R.K.Sabharwal Vs. State of Punjab (1995(2) SCC 745);
- 2.Union of India V. Virpal Singh Chaugan (1995 (6) SCC 684);
- 3.Ajith Singh Januja Vs. State of Punjab and others (Ajith Singh-II) (1997 (7) SCC 209);
- 4.Bimlesh Tanwar Vs. State of haryana and others (2003 (5) SCC Page 604);
- 5.M.Nagaraj and others V Union of India ((2006) (8) SCC 212);
- 6.U.P. Power Corporation Ltd V. Rajesh Kumar and others(2012 (7) SCC 1);
- 7.S.T.Sadiq Vs. State of Kerala (2015 (4) SCC 400);

8.N.Santhosh Kumar and others V. Tamil Nadu Public

Service Commission and others (2015 (4) MLJ 281)

9.S.Panneerselvan and others V. State of Tamil Nadu

(2015 (10) SCC 292)

10. B.K.Pavitra and Others Vs. Union of India and Others

(2019 SCC Online SC 694).

3

36. Submissions of the learned counsel for the Respondents:

36.1. The learned Advocate General appearing for the State and Mr.Venkatramani, learned Senior Counsel appearing for the Tamil Nadu Public Service Commission along with Mr.N.L.Raja, learned Senior counsel appearing for the respondents 9 and 10 in W.P.No.6649 of 2017 and Mrs.Arulmozhi, learned counsel appearing for the respondents in W.P.Nos.11150, 11151 and 22136 of 2018 made their submissions as under.

36.2. When a judgment is problematic, it can be got over by removing the basis. So long as the power is available, amendments and provisions can be introduced tracing it to an anterior date. There is neither vested right nor retrospective application involved. The impugned

provisions have been brought forth in tune with the social philosophy enshrined under Article 16(4) along with 16(1) of the Constitution of India. What is to be seen is the social justice. It can never be stated that following reservation would impact efficiency of the administration. The respondents are well within their power to fix and adopt their own procedure in selecting the candidates as per the roster. After the decision rendered in **Bimlesh Tanwar case**, though done subsequently, the mistake committed has been rectified as the earlier judgment of the Division Bench in **P.S.Ghalaut case** stood overruled. There is no constitutional right involved. The question of seniority does not take in its sweep a constitutional right but it is only a civil right. It being a civil right, the respondents are well within their power to enact law. The constitutional validity of 69% is pending before the Apex Court and therefore, the same cannot be raised in these proceedings. Though there are no materials produced with respect to adequacy, increasing the reservation of 69% itself would show the need. When a subjective satisfaction is exhibited, this Court cannot go into it while finding out adequacy. There is nothing wrong in having a roster point as a basis for fixing seniority. To buttress their submissions, they made reliance upon

the decisions noted below.

- 1 B.K.Pavithra and others Vs. Union of India and others (2019 SCC Online SC 694);
- 2 Union of India Vs. Ramesh Ram and others (2010 (7) SCC 234);
- 3 Arvinder Singh Bains Vs. State of Punjab and others (2006 (6) SCC 673);
- 4 M.H.Patil Vs. State of Maharashtra and others (1999 (1) SCC 249);
- 5 Tripurari Sharan and another Vs. Rajit Kumar Yadav and others (2018 (2) SCC 656);
- 6 Prafulla Kumar Das and others Vs. State of Orissa and others (2003 (11) SCC 614);
- 7 S.S.Bola and others Vs. B.D. Sardana and others (1997 (8) SCC 522);
- 8 T.Narasimhulu and others Vs. State of Andhra Pradesh and others (2010 (6) SCC 545);
- 9 High Court of Allahabad Vs. State of Uttar Pradesh (Civil Appeal No.3356 of 2018)
- 10 Punjab and Haryana High Court at Chandigarh Vs. State of Punjab (Civil Appeal Nos.5518 to 5523 of 2017 dated 03.10.2018).

37. DISCUSSION:

37.1. We shall first take the issue qua 'constitutional validity'.

Admittedly, the impugned provisions have been introduced, seeking power

from Article 16 of the Constitution of India. There is no difficulty in understanding the entire Article as a whole. Either they may have different role or similar, they are meant to achieve the constitutional goal and thus, concern is the same. Social equality is not against the concept of equality. We do not wish to undertake a studied scrutiny of the Article which had come up for a larger evaluation before the Apex Court starting from **Indra Sawhney** and ending with **Jarnail Singh and others Vs Lachhmi Narain Gupta(2018 (10) Supreme Court Cases 396)**.

37.2. Article 16(4) has to be read along with Article 16(2) of the Constitution of India. So long as the existence of inadequate representation supported by empirical and quantifiable data and material in vogue, it is well open to the State to have reservation in selection to bring forth social justice. After all, that must be the constitutional duty and the responsibility of the State towards its goal and philosophy. Resultantly, any non compliance in this regard would infringe its protection given under Article 16(2) of the Constitution of India. Therefore, any reservation is not automatic but can only be on need basis. This is more so, for a special reservation, either horizontal or internal.

37.3. In the case on hand, the State of Tamil Nadu took umbrage under Article 16(4) of the Constitution of India to get over the dictum of the Court. We may note at the cost of repetition that the Constitutional Bench of the Apex Court has already held and which was taken note of by other decisions, that Article 16(4) does not authorise such an action unless there is an express provision like the one introduced by way of 77th and 85th amendments in Article 16(4A) of the Constitution of India. As it is an express statement of law, we are constrained to hold that the State of Tamil Nadu does not have the power, authority or cachet to introduce the impugned provisions tracing Article 16(1) and 16(4) of the Constitution of India as their source of power, we are constrained to note that we are dealing with a case involving all sort of reservations at the level of seniority when there is no material available nor produced before this Court.

37.4. The learned Advocate General placed substantial reliance upon the judgment of the Apex Court in **B.K.Pavitra II** to convince us that Article 16(4) of the Constitution of India is not only an enabling

provision, but has sufficient resource in it to take care of the situation warranting reservation in promotion, which would include seniority as well.

37.5. We are afraid the said contention cannot be countenanced for more than one reason. We have already discussed the import of the said decision. It is certainly distinguishable on facts. Firstly, the issue was with respect to the scope and ambit of Article 16(4-A) of the Constitution of India. However, we are concerned with Article 16(4-A) of the Constitution of India, which is sought to be applied for seniority. Secondly, there was a comprehensive report which found acceptance by the Court, which is certainly missing in our case. Thirdly, the Apex Court has held that the outer limit of 50% for reservation shall not be breached. It is accordingly breached, through the 200 point roster by providing 69% reservation along with horizontal and internal reservation. It is to be stated that facilitating a meritorious reserved candidate to choose 'general turn' or 'reserved' would only mean that the State treats him as a reserved candidate. This observation, we make only to indicate that reservation in selection is different from seniority and promotion. In fixing seniority and conferring promotion, different yardsticks and parameters are to be

applied.

37.6. We may also note that the Apex Court was conscious of all the decisions rendered by it starting from **Indra Sawhney case** on the understanding of Article 16(4) and 16(1) of the Constitution of India. If the interpretation sought to be given by the learned Advocate General is found acceptance by us, then in such event, Article 16(4-A) of the Constitution of India would become redundant and otiose making it nugatory.

37.7. Accordingly, we hold that the impugned provisions do not have the legal sanctity under Article 16 of the Constitution of India. Even assuming that the same is in existence, the adequacy and the need for reservation have not been supported by requisite materials. Therefore, on both these grounds, the provisions are to be declared as ultra vires and unconstitutional.

37.8. Though a submission has been made by the learned Senior Counsel Mr.N.L.Raja appearing for the respondents 9 and 10 in

W.P.No.6649 of 2017 that the right involved is only a statutory right, we are unable to accept the same as we are concerned with the issue of fixation of seniority in accordance with law. Such a right is strengthened by the orders of the Court removing legal obstacles.

37.9. As we declare the provisions to be unconstitutional, the petitioners get their interest to be considered for promotion based on their seniority on the order of merit. It does create an interest to be considered for promotion with seniority as a facet of intact. Certainly a declaration of law by a constitutional Court followed by its directions creates a right which can be enforced after the impediment goes. Support is drawn by us in the decision of the Apex Court in **S.S.Bola and Others V. B.D.Sardana and Others (1997 (8) Supreme Court Cases 522)**, wherein in paragraph 153, it has been held as follows:

“153(AB). A distinction between right to be considered for promotion and an interest to be considered for promotion has always been maintained. Seniority is a facet of interest. The rules prescribe the method of recruitment/selection. Seniority is governed by the rules existing as on the date of consideration for promotion. Seniority is required to be worked out according to the

existing rules. No one has a vested right to promotion or seniority. But an officer has an interest to seniority acquired by working out the rules. The seniority should be taken away only by operation of valid law. Right to be considered for promotion is a rule prescribed by conditions of service. A rule which affects chances of promotion of a person relates to conditions of service. The rule/provision in an Act merely affecting the chances of

promotion would not be regarded as varying the conditions of service. The chances of promotion are not conditions of service. A rule which merely affects the chances of promotion does not amount to change in the conditions of service. However, once a declaration of law, on the basis of existing rules, is made by a constitutional court and a mandamus is issued or direction given for its enforcement by preparing the seniority list, operation of the declaration of law and the mandamus and directions issued by the Court is the result of the declaration of law but not the operation of the rules per se.”

37.10. On the questions pertaining to conversion of Roster Point System to be utilised as the basis of seniority, removal of the basis, retrospective effect and affecting the efficiency of the administration, we do hold that they are accordingly dealt with elaborately in **B.K.Pavitra II**. However, for doing so, there must be sanction of law which is apparently lacking in these cases, in the absence of any enabling provision like Article 16(4-A) of the Constitution of India. Obviously, a

statute can be made to operate retrospectively. However, there must be reasons for doing so. We may also note that even in **B.K.Pavitra-II** in the first round, the writ petitions filed were allowed and thereafter, the impugned enactment came. The Court was also concerned with the roster point. Similarly, a right to get vested should crystallise into a settled one. Except the writ petition in W.P.No.5735 of 2017, where the benefit of the Division Bench has already been granted, we do not find any vested right being affected.

37.11. Mr.S.R.Raghunathan, learned counsel appearing for the petitioners in W.P.No.5735 of 2017, placed reliance upon Article 31(b) of the Constitution of India along with IX Schedule to bring forth a distinction between Act 45/1994, which was accordingly placed in the IX Schedule and the present impugned provisions. The said contention, in our considered view, deserves to be rejected. Firstly, 200 point roster exists for quite some time and even during the earlier round of litigation. Strangely it was not questioned at the relevant point of time. Therefore, the question of delay, laches and acquiescence would certainly arise. Some

of the petitioners are also beneficiaries of the 200 point roster. Thus, a petitioner, who is the beneficiary, cannot turn-round and question the same when it comes to seniority. Doctrine of approbate and reprobate would get attracted. Even before us, this issue has not been raised in the affidavit filed but raised such a plea only at the time of argument and followed by the written argument. The constitutional validity of the Tamil Nadu Act 45 of 1994 is also pending before the Apex Court. The petitioners cannot be allowed to contend that it is alright to follow 69% reservation for selection but not for seniority. We are not inclined to go into the contention raised on merit at this point of time.

37.12. We find the presence of 'manifest arbitrariness' in the impugned provisions. Neither there appears to be any power available nor procedure followed. This appears to be a knee jerk reaction to circumvent and nullify the judgment of the Division Bench in **Santhosh Kumar case**, which attained finality. Obviously, the purpose is to undermine the benefit conferred. Though a basis can very well be removed, however, as Article 16 of the Constitution of India does not confer any such power except on adequacy, that not being complied

with, coupled with the fact that when there involves a right to be considered for promotion, the impugned provisions are nothing but product of 'legislative arbitrariness'.

37.13. We do not find any 'fairness in action' on the part of the official respondents for the aforesaid reason. A 'welfare State' will have to keep in mind the interest and one and all. Any action of the State should be a balancing one and therefore, a basic rational approach is required. Unfortunately, the distributory justice appears to be missing.

37.14. Now, let us take the individual writ petitions. W.P.Nos. 11150, 11151 and 22136 of 2018 have been filed questioning the backlog. Here again, the question of delay, laches and acquiescence would be relevant factors. At the time of seniority fixation, no eyebrows were raised. Few promotions have taken place. After quite a number of years, these writ petitions have been filed inter alia alleging that the procedure followed is contrary to **R.K.Sabharwal's case**. We are afraid such a challenge cannot be permitted at this stage. Persons have been moved from the post of Assistant Engineer to Assistant Executive Engineer and to

Executive Engineer. Though the last promotion was made during the pendency of the proceedings before us, the earlier promotions were never questioned. It is not, as if, the petitioners were not aware of the seniority fixed. We are not inclined to accept the contentions on merit as well.

37.15. We are dealing with the issue which has arisen because of the filling up of the backlog vacancies. Backlog vacancies were filled up along with ensuing year by carrying them forward. The backlog vacancies are thus meant for the previous year. Therefore, there is nothing wrong in the private respondents being placed above the petitioners. After all, we are concerned with the social justice to be rendered leading to equality. If to say there is over representation, now, it implies, there was under representation earlier. The private respondents could have been selected in the earlier year. Had it been done, the petitioners would not have got any grievance. Just because, the selection process happens to be one and the same, the petitioners cannot claim parity with the private respondents. Accordingly, W.P.Nos. 11150, 11151 and 22136 of 2018 deserve to be dismissed.

37.16. W.P.Nos.998 of 2017 and 10021 of 2018 have been filed on the premise that a candidate, who is otherwise eligible to be considered under the 'general turn' has not been considered as against a less meritorious one. There is no dispute on the factual position. However, what had happened was that the Tamil Nadu Public Service Commission fixed the cut off marks for each category starting from 'general turn'. As per Section 27(d) of the Act and Rule 22(b), a candidate, who is entitled to be considered under reservation category, is also eligible to contest the general turn. Now what it did was to permit a candidate belonging to the Backward Community reserved category to be fitted in the said category, though he came under 'general turn' on performance. This was done to facilitate the candidate to go up in the seniority or better posting as the case may be. In a given case, there may not be any difficulty in the procedure adopted from the point of view of the meritorious reserved candidate. Unfortunately, the candidate, in the reserve category has been inter changed by placing him in the 'general turn'. Resultantly, in the vacancy created in the 'general turn' by option of the candidate so selected, the other meritorious candidate, who has got higher mark than the reserved candidate got missed out. This is a classical illustration of

reverse/negative discrimination extending reservation in a different form.

37.17. As noted earlier, 69% reservation is being followed in the State of Tamil Nadu and the roster point is also fixed in accordance with the reservation policy. Therefore, there is absolutely no doubt that the procedure adopted would result in excess reservation. We have already considered the decision of the Apex Court in **Tripurari Sharan and another V. Ranjit Kumar Yadav and others(2018 (2) Supreme Court Cases 656)** on the very same issue, wherein the earlier decisions rendered were taken note of. We also hold that roster point cannot be the basis for seniority giving adequate reasons both on law and fact. The very challenge itself is to the fixation of seniority or preference on the basis of roster point.

37.18. Mr.Vekataramani, learned Senior Counsel appearing for the Tamil Nadu Public Service Commission, submits that there is difference between a selection, fitment and seniority. This artificial interpretation sought to be made cannot be accepted as Section 27(d) of the Act corresponding to Rule 22 only speaks about 'selection'.

37.19. The other contention is that the present procedure has been followed from 2003 onwards. Thus, the understanding of an Executive Authority in adopting the particular procedure on an interpretation of the provision will have to be allowed to be continued. This contention also deserves to be rejected as illegality cannot be justified on the ground of being followed for more number of years. It is nothing but a perpetuation of a wrong.

37.20. The petitioners are aggrieved only now and therefore, it is for the official respondents to satisfy the genuineness of the procedure followed. Rule 22(c), which is *in pari materia* to Section 27(e) of the Act prescribes the procedure. This provision leaves no room that what is involved is only a selection. Article 16 of the Constitution of India cannot be invoked to justify the case of a less meritorious candidate being fitted into a 'general turn', though others are waiting in queue. Such a procedure adopted is totally arbitrary to say at the least.

37.21. A procedure, which is being followed contrary to rule, cannot

be approved by the Court, especially when it affects the right of the citizen. Section 27(d) of the Act and Rule 22(b) merely provide for meritorious reserved candidates to adopt for reserved category when it confers better benefit. However, a reserved candidate, having secured lesser marks than the other meritorious candidates, cannot supercede them by getting into the 'general turn', which procedure is not even contemplated either in the Rules or the Act. Thus, the contention raised that neither the Rule nor an Act has been challenged cannot be countenanced because they do not provide for such a procedure.

37.22. The endeavour of the learned Senior Counsel to read Section 27(e) of the Act and Rule 22(c) by reading the word 'selection' as fitment and seniority also cannot be accepted on the general principle of interpretation of a statute. We do not find any ambiguity in the words used. They also clarify that selection of a meritorious reserved candidate in the 'general turn' on merit would not affect the reserved list. Hence there is absolutely no connection between 'general turn' and 'reserved'. Thus, the procedure adopted by the official respondents is nothing but an indirect way of reservation even beyond 69%. The candidates were never

informed about their marks obtained. Thus, they have been kept in dark. In such view of the matter, we are of the view that W.P.Nos.998 of 2017 and 10021 of 2018 deserve to be entertained.

37.23. W.A.No.2610 of 2019 is also to be allowed as a consequence to the allowing of the writ petitions challenging the vires of the provisions dealt with earlier. The learned single Judge merely dismissed the writ petition by taking note of the impugned provisions and therefore, the appellant is entitled to the relief sought for.

38. CONCLUSION:-

In the light of the discussion and the findings hereinabove, the following conclusion is arrived at.

- i Sections 1(2), 40 and 70 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, are declared as ultra vires and unconstitutional;
- ii The respondents are directed to redo the exercise of fixation of seniority within a period of 12 weeks from the date of receipt of a copy of this order;

iii Delay, laches, acquiescence and accrued right are the factors to be considered by the Court when similar reliefs are sought for in future;

iv W.P.Nos.1147, 5735, 22852, 34311, 34312 of 2017, 7511, 8718 to 8720, 18725, 26442 and 31156 of 2018 are allowed;

v W.A.No.2610 of 2019 is also allowed;

vi W.P.Nos.998 of 2017 and 10021 of 2018 stands disposed of with a direction that the petitioners are entitled to the benefit conferred under the order of the Division Bench in **Santhosh Kumar's case**;

vii W.P.No.6649 of 2017 stands allowed with respect to the consequential relief sought for;

viii Consequently, the respondents are directed to refix the seniority within a period of twelve weeks from the date of receipt of a copy of this order; and

ix W.P.Nos.11150, 11151 and 22136 of 2018 are dismissed.

No costs. Consequently, all connected miscellaneous petitions stand closed.

W.P.No.998 of 2017

[M.M.S.,J.] [T.K.R.,J.]
15.11.2019

Index : Yes / No
Speaking Order/Non Speaking Order

raa

To

- 1 The Secretary
State of Tamil Nadu
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 9.
2. The Additional Chief Secretary to Government,
Highways and Minor Ports Department,
Fort St. George, Chennai-600009
3. The Director General (Highways)
Highways Department, Guindy HRS Campus,
Chennai-600025.
4. The Secretary,
Tamil Nadu Public Service Commission ,
Frazer Bridge Road, Chennai-600003.

W.P.No.998 of 2017

**M.M.SUNDRESH, J.
and
RMT. TEEKAA RAMAN,J.**

**W.P.Nos.998 of 2017
etc., batch**

15.11.2019