

## **Cases relating to fixation of seniority:**

**Parties :** A. Visalakshi & Another Versus State of Tamil Nadu rep. By its Secretary to Government Home (Police XVI) Department & Others

**Court :** High Court of Judicature at Madras

**Case No :** W.P.NO.2111 OF 2007

**Judges:** THE HONOURABLE MR. JUSTICE T. RAJA

**Appearing Advocates :** For the petitioners: P1, S. Vadivelu, Advocate, P2, R. Muthukumarasamy, senior counsel for R. Sekaran, Advocate. For the Respondents: R1 and R2, S. Gopinathan, R3, M. Bhaskar, R4 to 7, 9 to 11, 13 to 21, 23, 25 to 27, S. Ravi, Advocates.

**Date of Judgment :** 02-09-2010

### **Head Note :-**

Constitution of India - Article 226 - General Rule of the Tamil Nadu State and Subordinate Services Rules -35(a), 10(a)(i), 10(a)(i)(1), 23(a)(i), 35(a), 39(c), 39(a) and 35(a)(a) - two petitioners filed on file of Tamil Nadu Administrative Tribunal to quash the seniority list of Scientific Assistant Grade II issued by the Second Respondent in proceedings – Writ petition filed – High Court held State Government regularisation and seniority were already settled - settled position will not only unsettle the final but will also pave way for chaos - Writ Petitions dismissed.

### **Cases Referred:**

1. STATE OF TAMIL NADU V. E.PARIPOORNAM (AIR 1992 SC 1823)
2. A.P.M.MAYAKUTTY V. SECRETARY, PUBLIC SERVICE DEPARTMENT 1977 (2) SCR 937 at 942
3. K.MADALAIMUTHU AND ANOTHER V. STATE OF TAMIL NADU AND OTHERS (A.I.R.2006 SC 2662)
4. STATE OF TAMIL NADU V. E.PARIPOORNAM (AIR 1992 SC 1823) and M.P.PALANISAMY V. A.KRISHNAN (2009 (6) SCC 428)
5. N.K.CHAUHAN V. STATE OF GUJARAT
6. DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION V. STATE OF MAHARASHTRA AND OTHERS 1990 (2) SCC 715
7. M.P.Palanisamy Vs.A.Krishnan 2009 (6) SCC 428

### **Judgment :-**

(Writ Petition No.2111/2007 came to be numbered under Article 226 of the Constitution of India by way of Transfer of O.A.No.7206/1999 from the file of the Tamil Nadu Administrative Tribunal with the prayer to quash the seniority list of Scientific Assistant Grade II issued by the Second Respondent in proceedings Proc.No.A4/18829/97, O.O.No.107/97 dated 20.4.98 in so far as it relates to the applicants herein as the said seniority list is contrary to General Rule 35 (a) and is not based on the rank assigned to the applicants in the list of selected candidates for the post of Scientific Assistant Grade II by the Tamilnadu Public Service Commission and to direct the respondents 1 to 3 herein to revise the seniority list of Scientific Assistant Grade II issued by the Second Respondent in proceedings Proc.No.A4/18829/97 / O.O.No.107/97 dated 20.4.98 based on the rank assigned to the applicants herein by the TamilNadu Public Service Commission in the competitive examination held in the year 1989 for Scientific Assistant Grade II and under General Rule 35(a) and consequently to include the name of the applicants in the

panel of Scientific Assistant Grade I issued by the Second Respondent in proceedings Rc.No.A4/883/99 / O.O.5/99 dated 22.1.1999 and consequently promote the applicants herein as Scientific Assistant Grade I, based on the seniority list so revised.)

1. The two petitioners A.Visalakshi and D.Devaki filed O.A.No.7206/1999 on the file of the Tamil Nadu Administrative Tribunal with the prayer to quash the seniority list of Scientific Assistant Grade II issued by the Second Respondent in proceedings Proc.No.A4/18829/97 O.O.No.107/97 dated 20.4.98 in so far as it relates to the applicants herein as the said seniority list is contrary to General Rule 35 (a) and is not based on the rank assigned to the applicants in the list of selected candidates for the post of Scientific Assistant Grade II by the Tamilnadu Public Service Commission and to direct the respondents 1 to 3 herein to revise the seniority list of Scientific Assistant Grade II issued by the Second Respondent in proceedings Proc.No.A4/18829/97 / O.O.No.107/97 dated 20.4.98 based on the rank assigned to the applicants herein by the TamilNadu Public Service Commission in the competitive examination held in the year 1989 for Scientific Assistant Grade II and under General Rule 35(a) and consequently to include the name of the applicants in the panel of Scientific Assistant Grade I issued by the Second Respondent in proceedings Rc.No.A4/883/99 / O.O.5/99 dated 22.1.1999 and consequently promote the applicants herein as Scientific Assistant Grade I, based on the seniority list so revised.

2. (i) The petitioners were temporarily appointed as Scientific Assistants Grade II on 15.9.1988 and 25.3.1988 respectively through the Employment Exchange under 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules. The said posts are coming under the purview of Tamil Nadu Public Service Commission (hereinafter referred to as "the TNPSC") with effect from 03.10.1986. Whiles, the TNPSC through advertisement called for applications for 36 vacancies of Scientific Assistants Grade II in the Forensic Sciences Department. In response to the notification, the petitioners applied for the post of Scientific Assistants Grade II. By a communication dated 22.12.1995, the TNPSC informed the applicants that they were provisionally selected for appointment to the said post with rank No.1 and 5 respectively according to the rank list of selected candidates published by the TNPSC Bulletin dated 16.4.1998. Though 36 persons already working temporarily in the Forensic Science Department applied along with other persons from outside public for the 36 vacancies, the TNPSC selected only 14 candidates as fit for the post of Scientific Assistants Grade II. Rest of them were not selected. Out of the 14 candidates so selected, the petitioners ranks are in Sl.No.1 and 5 respectively. Since the seniority of the petitioners should be determined on the basis of the rank obtained by the petitioners in the list of approved candidates drawn up by the TNPSC the ranking was not properly assigned in the impugned proceedings No.Proc.No.A4/18829/97 / O.O.No.107/97 dated 20.4.1998. Instead the petitioners' seniority have been fixed at Sl.Nos.35 and 32 respectively as temporary candidates ignoring the mandatory rules under General Rule 35(a). On the other hand, the persons who were not successful in the TNPSC examination have been made senior to the petitioners though the petitioners were the successful candidates. Being aggrieved by the impugned seniority list dated 20.4.1998, a representation was made to the second respondent on 19.5.1998 for fixing the seniority based on the rank assigned by the TNPSC specifically indicating that both the petitioners should be placed in Sl.Nos.9 and 12 respectively in the impugned seniority list on the basis of the General rule 35(a).

(ii) Though both the petitioners along with other persons filed on an earlier occasion a common O.A.No.1728/1989 on the file of the Tamil Nadu Administrative Tribunal for regularisation of temporary services against the same respondents, in the said O.A., the Tribunal by order dated 04.12.1991 directed that the appointments made prior to 09.12.1988 should be dealt with in the same manner as the appointment made prior to 03.10.1986. Subsequently, the said order of regularisation was implemented regularising from the date of their initial appointment. As the same has not been done, the Original Application came to be filed. On abolition of the Tribunal, the said Original Application has been transferred to this Court and renumbered as

W.P.No.2111/2007.

3. (i) Mr.R.Muthukumarasamy, learned senior counsel appearing for the second petitioner submitted that though the petitioners were provisionally appointed as Scientific Assistant Grade II on 15.9.1988 and 25.3.1988 respectively through employment exchange under 10(a)(i), subsequently the post of Scientific Assistants Grade II were brought within the purview of the TNPSC with effect from 03.10.1986. Therefore, the assignment of seniority should be in accordance with the law as contemplated by General Rule 35(a). The seniority of the petitioners should be fixed on the basis of the rank given by the TNPSC. Therefore, the respondents 4 to 27 cannot claim seniority mainly on the ground that their temporary services were regularised under General rule 23(a)(i) with effect from the date of their joining.

(ii) The learned senior counsel further contended that though the Tribunal in O.A.Nos.1727 and 1728 of 1989 dated 04.12.1991 gave a direction that the appointments prior to 09.12.1988 should also be dealt with in the same manner as appointments made prior to 03.10.1986 and should be regularised on that basis, the said order passed by the Tribunal giving the direction for regularisation of services of all those who approached the Tribunal did not mention anything about the issue of seniority. Though the first respondent pursuant to the order of the Tribunal regularised the services of the respondents 4 to 27 along with the petitioners in G.O.Ms.No.996, Home (Police-XVI) Department dated 04.7.1997 stating that the Government directs that under Rule 23(a)(1) of the General Rules for the Tamil Nadu State and Subordinate Services, the services of the Scientific Assistant Grade II annexed to that order in the Tamil Nadu Forensic Subordinate Services be regularised with effect from the date noted against their names, the said order had never referred to seniority aspect and it only enabled the respondents 4 to 27 to draw the arrears of pay and increments and therefore, the petitioners cannot be denied the benefit of the General Rule 35(a).

(iii) The learned senior counsel also contended that the effect of regularisation under General Rule 23(a) has been considered already by the Apex Court in STATE OF TAMIL NADU V. E.PARIPOORNAM (AIR 1992 SC 1823) holding that regularisation under General Rule 23(a) does not confer seniority and when the Apex Court has specifically stated in the said judgment that it is not open to the parties to claim that their temporary services as Junior Professors upon regularisation should be counted for the purpose of determining the seniority in the cadre, it is not open to the respondents to claim that their temporary services upon regularisation should be counted for the purpose of determining the seniority in the cadre. The services rendered in the departmental post is available either for earning increments or for commencement of probation. That would be clear from Rule 23(a). Consistent with Rule 23(a) the Government in the order of regularisation has directed that incumbents are eligible for increment from the date of regularisation as they are fully qualified to hold the post on that date.

(iv) The learned senior counsel further urged that Rule 10(a)(i) provides for making temporary appointments when it is necessary in the public interest to do so owing to an emergency which has arisen for filling a vacancy immediately. Since such appointments are made otherwise than in accordance with the procedure prescribed under the Rules and since the respondents were appointed temporarily otherwise than in accordance with the rules, they are not entitled to count their temporary services for seniority.

(v) The learned senior counsel also relied upon the judgment of the Supreme Court reported in 1977 (2) SCR 937 at 942 (A.P.M.MAYAKUTTY V. SECRETARY, PUBLIC SERVICE DEPARTMENT) wherein it has been held that service rendered by the applicants under 10(a)(i)(1) cannot be considered for the purpose of seniority as such an appointment is a matter of stop-gap, emergency or fortuitous arrangements.

(vi) The learned counsel further relied upon another judgment rendered in K.MADALAIMUTHU AND ANOTHER V. STATE OF TAMIL NADU AND OTHERS (A.I.R.2006 SC 2662) to reiterate his

contention that the temporary service rendered cannot be counted for reckoning seniority, but it is only from the date on which the services are regularised that such appointee can count his seniority in the cadre.

4. (i) Mr.S.Vadivelu, learned counsel for the first petitioner, while repeating the arguments advanced by Mr.R.Muthukumarasamy, learned senior counsel for the second petitioner, again took me to Rule 35(a) and 35(a)(a) to bring home the case under Rule 35(a) by arguing that the seniority of a person in a service, class or category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other appointing authority, as the may be, subject to the rule of reservation where it applies. Without following the said rule 35(a) the petitioners have been wrongly shown as juniors to the respondents 4 to 27 herein though the respondents failed in the examination conducted by the TNPSC ignoring the fact that the petitioners are successful and selected candidates entitled to be placed above the respondents 4 to 27 herein.

(ii) Mr.S.Vadivelu, the learned counsel further contended that the hard earned efforts made by the petitioners for writing the examination conducted by the TNPSC for the post of Scientific Assistant Grade II having been proved meritorious by coming as successful unlike the respondents 4 to 27, yet the respondents 1 to 3 failed to provide the benefit of their success in the examinations which is totally contrary to Rule 35(a).

5. (i) Per contra Mr.S.Ravi, learned counsel appearing for the respondents 4 to 27

interalia contended that the present writ petition filed by the petitioners is barred by the rule of res-judicata as per section 11 of the Civil Procedure Code since the writ petitioners were parties in the common O.A.Nos.1727 and 1728 of 1989 filed by both the petitioners and the respondents herein before the Tamil Nadu Administrative Tribunal seeking a common prayer on behalf of the petitioners and the respondents for regularisation of their services by quashing the TNPSC selection. When both the petitioners were parties to the decision given by the Tamil Nadu Administrative Tribunal and when the decision was also having the binding character of the judgment, the said decision is binding both the writ petitioners and the respondents, since the same was not modified or reversed by the Apex Court.

(ii) Secondly, he urged that the contesting respondents were appointed between February 1987 and September 1988 whereas the petitioners according to their own pleadings were appointed on 08.3.1997. Therefore, the petitioners cannot claim seniority over the contesting respondents inasmuch as the seniority of a person in service shall be determined by the ranking obtained by him in the list of approved candidates by the TNPSC or other appointing authority as the case may be. Rule 35(a) would apply only to seniority among those selected by the TNPSC and will not apply to appointments made outside the purview of the TNPSC. Hence, he contended that the case of the petitioners that Rule 35(a) would apply to the facts of the present case is absolutely incorrect.

(iii) The learned counsel questioned whether the post of Scientific Assistants Grade II comes under the purview of TNPSC till 09.12.1988 and whether Rule 35(a) of the General Rule can be applied the the facts of the present case.

(iv) Mr.S.Ravi, further contended that the judgments of the Apex Court in STATE OF TAMIL NADU V. E.PARIPOORNAM (AIR 1992 SC 1823) and M.P.PALANISAMY V. A.KRISHNAN (2009 (6) SCC 428) cannot be applied to the present case when there was no conditional regularisation in the case of contesting respondents herein. He further contended that in the abovesaid judgments of the Apex Court the order of regularisation itself had a condition that the TNPSC candidates will be ranked senior, but when no such condition was given by the Tribunal in the order dated 04.12.1991 passed in O.A.Nos.1727 and 1728 of 1989 the abovesaid judgments are

not applicable to the case on hand. The writ petitioners after issuance of the notification by the TNPSC seeking to fill up the post of Scientific Assistant Grade II apprehending that the outsiders would be appointed by ousting the petitioners and the respondents having approached the Tribunal seeking quashment of the notification issued by the TNPSC and after getting an order of regularisation, having enjoyed the benefit of regularisation pursuant to the Tribunal's decision, including the enjoyment of pay fixation and promotion as Grade I Scientific Assistants, taking into account the impugned seniority list, they cannot be allowed to take opposite stand at this distance of time.

(v) Lastly, the learned counsel contended that by taking into account the date of entry into service by the petitioners for the simple reason that they were qualified in the TNPSC for the same post subsequently after getting the status of direct recruitment, they cannot claim seniority from the date when they were not borne in the service. This principle is well settled in N.K.CHAUHAN V. STATE OF GUJARAT.

6. Mr.S.Gopinathan, learned Additional Government Pleader appearing for the respondents 1 and 2 submits that the posts of Scientific Assistant Grade II were under the purview of the TNPSC only with effect from 09.12.1988 and well prior to that date services of both the petitioners and the respondents were regularised as per the order of the Tribunal in O.A.Nos.1727 and 1728 of 1989 dated 04.12.1991 to which both petitioners and the respondents were parties and the said order also became final. Hence, the present prayer is unsustainable in law and on the basis he prayed for dismissal of the Writ Petition.

7. Heard the submissions of the learned counsel for the parties.

8. Prima facie, both the petitioners as well as the contesting respondents 4 to 27 were appointed under 10(a)(i)(1) as Scientific Assistants Grade II. When the respondents 4 to 27 were appointed in the year 1987-1988, the petitioners were appointed on 15.9.1988 and 25.3.1988 respectively under rule 10(a)(i)(1) and subsequently they were appointed through the TNPSC only on 08.3.1997. It is relevant to refer G.O.No.2790, Home (Forensic Science)Department, dated 03.10.1986 whereby the Government had notified the special rules for the Tamil Nadu Forensic Science Subordinate Service under Article 309 of the Constitution of India in supersession of the earlier Special Rules. The post of Scientific Assistant Grade II was classified under Clause I in category 3 wherein the method of appointment was specified as by direct recruitment or recruitment by transfer from any other service. When the appointing authority was specifically mentioned as Director of Forensic Science Department, by mentioning even the qualification as a first class degree in Science and preference shall be given to M.Sc., in Forensic Science, nowhere in the said rules dated 03.10.1986 it was mentioned that the post of Scientific Assistant Grade II comes under the purview of TNPSC. By another G.O.Ms.No.635, Personnel and Administrative Reforms Department, dated 09.12.1988 the Government has issued amendment to the Tamil Nadu Public Service Commission Regulations, 1954 bringing the post of Scientific Assistant Grade II within the purview of TNPSC. It is relevant to mention herein that though the said amendment was issued with the retrospective effect from 03.10.1986, the said amendment is dated 09.12.1988, but during the interregnum period between 03.10.1986 and 09.12.1988 all the contesting respondents herein were fully qualified to be appointed as Scientific Assistant Grade II and were already appointed as Scientific Assistants through employment exchange.

9. This legal position was made explicitly clear by the order passed by the Tamil Nadu Administrative Tribunal in O.A.Nos.1727 and 1728 of 1989 dated 04.12.1991 filed by the writ petitioners along with the contesting respondents wherein it states that these posts are outside the purview of the TNPSC and consequently appointments upto 03.10.1986 had been regularised from which date new rules for the post came into effect. The order bringing the post within the purview of the TNPSC was issued in G.O.Ms.No.635, P&AR, dated 09.12.1988 by giving

retrospective effect from 03.10.1986. The Tribunal noting the position very clear that when the petitioners and the respondents were appointed during the year 1987-1988 under Rule 10(a)(i)(1) from Employment Exchange the posts were not under the purview of the TNPSC, after giving direction to regularise their services, however, made it clear that the persons appointed in 1989 should take their chances in the examination for which notification has been issued in the same year. By virtue of the order passed by the Tribunal both the petitioners as well as the respondents jointly received the benefit of regularisation. However, the Government went on appeal before the Supreme Court challenging the correctness of the order passed by the Tribunal in O.A.Nos.1727 and 1728 of 1989 dated 04.12.1991. Subsequently during the pendency of the matter before the Honourable Apex Court, the Government withdrew the Civil Appeal and thereby accepted the order of the Tribunal.

10. Another subsequent event took place also requires reference here. These two petitioners also along with the respondents appeared for the examination conducted by the TNPSC. Except these two petitioners, no other person successfully selected.

However, the petitioners having become part of the order passed by the Tribunal are bound by the judgments of the Tribunal, since their service also have been regularized in pursuance of the directions issued by the Tribunal. Therefore, the appointments of the petitioners and the respondents were made as Scientific Assistants Grade II from 03.10.1986 to 09.12.1988 during which time the posts were outside the purview of the TNPSC. The appointments made are held as regular appointments. At this juncture, it is useful to refer the Constitution Bench judgment of the Supreme Court in DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION V. STATE OF MAHARASHTRA AND OTHERS reported 1990 (2) SCC 715 wherein it has been held that seniority cannot be determined on the sole test of confirmation, for, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If the initial appointment is not made by following the procedure laid down by the rules but to appointee continuous in the post uninterrupted till the regularisation of his services in accordance with the rules, the period of initial service will be counted.

11. Equally the order passed by the Tribunal in O.A.Nos.1727 and 1728 of 1989 dated 4.12.1991 needs to be dealt with herein. The said decision of the Tribunal while deciding the issue of regularisation of the petitioners as well as the respondents also dealt with the important question concerning the particular service given after careful consideration. Therefore, such a decision should be responded rather than scrutinised for finding out any possible error because it is not in the interest of service to unsettle the settled position.

12. After the decision given by the Tribunal in O.A.Nos.1727 and 1728/1989 dated 04.12.1991 though the matter was subsequently going to the Supreme Court on being withdrawn, became final. The TNPSC also in its letter No. 5971/CD-B2/95 dated 20.11.1996 and 27.3.1997 had instructed the Government to regularise the services of the petitioners under Rule 23 (a)(i) to Tamil Nadu State and Subordinate Service Rules. The Government also by accepting the Tribunal's judgment issued G.O.Ms.No.996, Home Department, dated 04.7.1997 regularising the service of the respondents.

Thus the service of the petitioners and the respondents once for all were regularised with effect from the date of appointment without any condition in the regularisation order. When there is no such condition in the regularisation order as rightly contended by the learned counsel appearing for the respondents the judgments referred in the E.Paripoornam's case and K.Madalaimuthu's case relied on by the writ petitioners would not be applicable to the case of the petitioners herein. Again the judgments in E.Paripoornam's case reported in AIR 1992 SC 1823 and the judgment in K.Madalaimuthu's case reported in AIR 2006 SC 2662 and another judgment in M.P.Palanisamy Vs.A.Krishnan reported in 2009 (6) SCC 428 are standing on a different footing than the case of the petitioners. It is useful to refer to para 13 of the judgment in E.Paripoornam's case and the same is extracted as under:

"13. In our opinion, the view expressed by the High Court not only runs counter to the terms of the order of the regularisation but also is inconsistent with statutory principle of determining seniority under R.35(a). In the first place the order of regularisation of the services of the candidates expressly states that the inter se seniority of the candidates would be in accordance with the rankings in the approved list prepared by the Public Service Commission and will not be affected in any way by the date of regularisation of services. When the order of regularisation of temporary service itself denies such service for the purpose of determining seniority, the Court cannot count that service for the purpose of seniority."

A mere reading of the abovementioned judgment clearly makes the case of the petitioners' clear that the order of regularisation issued both by the Tribunal in O.A.Nos.1727 and 1728 of 1989 dated 04.12.1991 readwith G.O.Ms.No.996, Home Department, dated 04.7.1997 make the issue very clear that herein is a case the order of regularisation of temporary service does not deny the regularisation of temporary service whereas the case dealt with by the Hon'ble Supreme Court in E.Paripoornam's case is totally on a different footing as it dealt with an order of regularisation of temporary service denying the counting of temporary services rendered by the concerned persons. By making it clear that the order of regularisation of the service of the candidates explicitly states that the inter se seniority of the candidates would be in accordance with the ranking list prepared by the TNPSC and will not be affected by the date of regularisation of the service. But in the case on hand, there was a clear cut direction for regularisation of the service of both the petitioners and the respondents without any condition. The said finding of the Tribunal became final between the petitioners and the respondents herein. Therefore, it cannot be neither contended that the post of Scientific Assistants Grade II comes within the purview of the TNPSC before 09.12.1988. Thus after availing the benefit of regularisation as directed by the Tribunal and the G.O., the petitioners are estopped from claiming regularisation. In this view of the matter, both the petitioners being parties to the decisions before the Tribunal and the same having become final and concluded, this writ petition is barred by the principle of resjudicata.

13. Further more, the respondents 4 to 27 were admitted in accordance with the rules 1987. But the petitioners came to be appointed through the TNPSC only on 08.3.1997. Therefore, their prayer to place them above the contesting respondents also cannot be accepted by taking further march over the 10 years old senior for the simple reason that these two petitioners got selected through TNPSC 10 years after their initial appointments.

14. What was held by the Hon'ble Apex court in K.Madalaimuthu's case needs to be kept in mind for answering the issue raised herein. Para 24 thereof holds that the law is well settled that initial appointment to a post without recourse to the rules of recruitment, is not an appointment to a service as contemplated under Rule 2(1) of the GeneralRules, notwithstanding the fact that such appointee is called upon to perform duties of a post born on the cadre of such service. In fact, Rule 39(c) of the General Rules indicates that a person temporarily promoted in terms of Rule 39(a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the rules. It stands to reason that a person who is appointed temporarily to discharge the function in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time as his appointment is regularised. It, therefore, follows that it is only from the date on which his services are regularised that such appointee can count his seniority in the cadre. There are three reasons distinguishing the present case from the above said judgment of the Apex Court.

(a)That both the petitioners herein and the respondents jointly moved the Tribunal seeking relief of regularisation against both Government and the TNPSC assailing the Notification calling for application to fill up the post of Scientific Assistant Grade II held by the petitioners and the respondents.

(b) That the Tribunal by order dated 4.12.91 in O.A.Nos.1727 and 1728 of 1989 restraining the TNPSC from filling up the posts of Scientific Assistants Grade II, directed the State Government to regularise the services of both petitioners and the respondents 4 to 27 with effect from the date of their order of appointment.

(c) That all the four parties to the decision given by the Tribunal viz., petitioners, respondents, the TNPSC and the State Government accepted the judgment of the Tribunal for regularisation because though the judgment of the Tribunal directing regularisation was appealed before the Hon'ble Supreme Court the appeal was withdrawn by the State and thereupon the judgment was acted upon by regularising their services which is the crucial point for determining the seniority. At this juncture if we read Para 24 of the judgment in Madalaimuthu's case hold thus:

"It, therefore, follows that it is only from the date on which his services are regularised that such appointee can count his seniority in the cadre."

As per this judgment the date of regularisation should be taken as a criteria for counting the seniority in the cadre, when all the respondents and the petitioners had accepted the said order of regularisation and in other words, since the writ petitioners though being parties to the said judgment, failed to challenge the judgment within one year as contemplated by Section 21 of the Administrative Tribunal Act, hence, they cannot rely upon either Paripoornam or Madalaimuthu or Palanisamy's judgments.

15. Another crucial aspect stand against the petitioners is that the present writ petitioners Tmt A.Visalakshi and D.Devaki filed O.A.No.1727 and O.A.No.1728 of 1989 respectively along with the contesting respondents before the Tamil Nadu Administrative Tribunal to declare Rule 4 of the Forensic Science Subordinate Service Rule as violative of Articles 14 and 16 of the Constitution of India and to quash the advertisement issued by the TNPSC to fill up the post of Scientific Assistant Grade I and Grade II and also to regularise the services of both petitioners and the contesting respondents as Scientific Assistant Grade II on the ground that both the petitioners and respondents were fully qualified and appointed through Employment Exchange as Scientific Assistant Grade II in the Department, but as per by the Advertisement the TNPSC failed to utilize the existing candidates for the said posts but called for outsiders to replace the existing and working candidates. The Tribunal by accepting the joint claim of the petitioners and the respondents gave two directions. Firstly directed that the purview of the TNPSC on the posts of Scientific Assistant Grade-II should be brought only from 9.12.1988 instead of from 3.10.1986 and the Temporary services of those Scientific Assistants Grade II recruited prior to 9.12.1988 be regularised. Aggrieved by the order passed by the Tribunal in O.A.Nos.1727 and 1728 of 1989 dated 4.12.1991 the State Government filed Special Leave Petition (Civil) Nos. 9712-9713/92 on the file of the Hon'ble Supreme Court of India. In the pending matter before the Supreme Court, both these petitioners along with the contesting respondents, opposed the Special Leave petitions by taking a stand that the posts of Scientific Assistant Grade II in Forensic Science Laboratory does not come within the purview of TNPSC and no consultation with the TNPSC is necessary and the second objection raised by the petitioners before the Supreme Court was that they were appointed with the contesting respondents through Employment Exchange as Scientific Assistant Grade-II when the posts were not within the purview of the TNPSC. In the meanwhile, the TNPSC issued a notification advertising on 23.9.1989 in dailies calling for candidates for selection to the posts of Scientific Assistant Grade II the vacancies for which were estimated for the year 1988-90. Simultaneously, the State Government withdrew the pending appeal from the Supreme Court, resultantly, accepting the order of the Tribunal to bring the posts of Scientific Assistant Grade II under the purview of the TNPSC only from 9.12.1988 instead of 3.10.1986. The State Government passed a G.O.No.996, Home, dated 4.7.1997 regularising the temporary services of both the petitioners and the respondents by treating the posts of Scientific Assistant Grade II is outside the purview of TNPSC till 9.12.1988. Therefore, the claim of the petitioners to assign the seniority above the respondents 4 to 27 for having been selected by the TNPSC is unsustainable.

16. When the temporary services of these petitioners and the respondents were already



regularised and their seniority also came to be fixed on the basis of the order passed by the Tribunal which also became final and since the posts of Scientific Assistant Grade II were brought under the purview of TNPSC from 9.12.1988 instead of 3.10.1986 and as per the communication from the TNPSC dated 22.12.1995, the petitioners were selected and came to be appointed only on 8.3.1997 ten years after the appointments of the respondents, the claim of the petitioners that they must be placed as seniors above the respondents is not legally sustainable. As rightly contended by the learned Additional Government Pleader appearing for the State, after regularising the services of both the petitioners and the respondents on the basis of the order passed by the Tribunal in O.A.Nos.1727 and 1728 of 1989 dated 04.12.1991, as bound by the direction of the Tribunal after regularisation of their services, their seniority was also fixed on the guidelines issued by the Tribunal in its order dated 4.12.1991. As such, if the ranks assigned by the TNPSC were to be considered for fixing their seniority as claimed by the petitioners, then the petitioners would have to be placed as new recruits in the vacancies arose only in the year 1989-90 and their seniority position also would be far below their present position, namely in SI.Nos.35 and 32 respectively, for the simple reason, that the petitioners were appointed by the TNPSC only on 8.3.1997 whereas the respondents and the petitioners were appointed originally through Employment Exchange between 1987 and September 1988. Therefore, rule 35(a) will not apply to the present case, but will apply only to seniority among the candidates selected by the TNPSC. Further, I have already held that Rule 35(a) will not apply to appointments made outside the purview of the TNPSC, because, these posts were brought under the purview of TNPSC only from 09.12.1988 but much before the respondents were appointed as Scientific Assistant Grade II.

17. When the posts were not under the purview of TNPSC in the year 1988, more importantly when the TNPSC and the State Government also have accepted the order of the Tribunal dated 04.12.1991 by not bringing their posts under the purview of TNPSC from 1986 but bringing the posts under the purview of TNPSC only from 09.12.1988, both the respondents and the petitioners need not be selected by the TNPSC as their services were already regularised with fixing up of their seniority. This view is taken not only to avoid the argument that the inter-se seniority once settled will be unsettled but fairness, equity and law also demand no interference with the concluded inter-se seniority already settled.

18. Therefore, I conclude precisely that after both the petitioners and the respondents were appointed in the year 1987-88 as Scientific Assistant Grade II under Rule 10(a)(i) (1) through Employment Exchange when the TNPSC and the State Government finally regularised their services by fixing their seniority, there would not be any more need for selection of the same candidates by the same TNPSC as their regularisation and seniority were already settled. Otherwise, the settled position will not only unsettle the final and concluded position but will also pave way for chaos in the administration at the cost of harmful and serious effect on the administration.

19. Hence, the Writ Petition fails and accordingly, the same stands dismissed. No costs.