

[2009] 9 S.C.R. 490

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M.P. PALANISAMY & ORS.

v.

A. KRISHNAN & ORS.

(Civil Appeal Nos. 3582-84 of 2009)

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MAY 15, 2009

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

*SERVICE LAW:*

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*Seniority – Teachers – Post Graduate Assistants – Inter-seniority between candidates selected by Service Commission and candidates appointed temporarily and regularized later or those who acquired the required qualification subsequently – Determination of – The High Court allowing the Writ Petitions filed by the Service Commission selected candidates – On appeal, Held: High Court was absolutely right in allowing the writ petitions of the Service Commission selected candidates – No reason to interfere with the well reasoned judgment of High Court – Tamil Nadu State and Subordinate Service Rules, Rule 23(a)(i) – General Rules of TNPSC – Rule 10(a)(i)(1).*

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**The inter se seniority of Post Graduate Assistants between the teachers appointed between 1.7.1978 and 28.4.1981, teachers who had acquired the required qualification subsequently, the candidates selected by the Service Commission and those appointed *ad hoc* after 28.4.1981, not selected by the Service Commission but were regularized, is in issue in the appeals. The judgment of the High Court allowing the claim of the Service Commission selected candidates, is impugned in the appeals.**

**Dismissing the appeals, the Court**

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**HELD: 1. Though the appellants had the necessary qualifications at the time of their initial appointment under Rule 10(a)(i)(1) of the General Rules of TNPSC and though they were subsequently regularized also, the regularization was conditional regularization, which was done way back in 1988. The condition regarding the seniority was explicit in the said regularization, which is clear from the mere reading of the G.O.Ms. No. 1813. It cannot be forgotten that this regularization was all along accepted by the present appellants. Once they chose to accept the regularization which was conditional, then it would have to be borne in mind that they have accepted the conditions also. It cannot be countenanced that only the favourable part of the G.O.Ms. was accepted by them and the unfavourable part was rejected. If they had to do it, they had to challenge the G.O.Ms. immediately. They did not do it, instead they waited almost for six years, when for the first time, they came out with an Original Application vide O.A. No. 3617 of 1994. Again, when the matters were decided in the Writ Petition Nos. 2911 and 3041 of 1998 on 24.3.1998 and the seniority prayed for on the basis of initial appointment was refused to them, they kept quiet, only to raise the same demand again in 2003 when the Panel was prepared. The Panel is absolutely correct in the light of G.O.Ms. No. 1813. The appellants merely raised a lame plea that they did not challenge the G.O.Ms. No. 1813, as they were expecting themselves to be placed over and above the TNPSC selected candidates. Such could never be the position in the wake of plain language of G.O.Ms. No. 1813. This is one of the main reasons why the claim of the appellants has to be rejected. The aspect of conditional regularization, therefore, had to be kept in mind. [Para 19] [506-C-H; 507-A-B]**

**2. It was pointed out that the Department had all along given the interpretation that the second condition**

A in G.O.Ms. No. 1813 applied only when the candidates appointed under Rule 10(a)(i)(1) and the TNPSC selected candidates came in the same year. That may be so. However, the parties cannot be allowed to act on the impressions, when the original text of the G.O.Ms. says  
 B otherwise. There was nothing in the language of the G.O.Ms. No. 1813 that the second condition would apply when the appointments of P.G. Assistants under Rule 10(a)(i)(1) and the TNPSC selected P.G. Assistants would be in the same year. That was wholly wrong. Even  
 C clarification by the Director of School Education had given a wrong position. That error could be perpetuated. It was rightly corrected later on when the stand was taken that all these P.G. Assistants would be below the TNPSC selected P.G. Assistants. [Para 20] [507-C-F]

D 3.1. Though the appellants were fully qualified P.G. Assistants at the time of their initial appointment after 1981, the fact of the matter is that they never faced any competition. They studiously and conveniently desisted from taking the examination, though it was made very  
 E clear to them that they would have to take the examination. There was a general advertisement issued and there was no question of presuming that these P.G. Assistants would in any manner be exempted from taking the examination of TNPSC without whose selection, they  
 F could never enter the Government service. Under the circumstances, it was for these P.G. Assistants to appear for the examination and prove themselves. They had come in ad-hoc manner and, therefore, they could not expect regularization straightaway. Under these  
 G circumstances, they remained on the roll in their ad-hoc capacity and, therefore, were not the members of the service. [Para 21] [507-F-H; 508-A-C]

H 3.2. One look at the first proviso to Rule 23(a)(i) of the Tamil Nadu State and Subordinate Service Rules shows

that in case of an ad-hoc employee, he cannot claim any seniority to the junior most person already in service. The words "junior most person already in service" in the proviso are extremely important. All the TNPSC P.G. Assistants were already in service, when the question of regularization of the P.G. Assistants appointed under Rule 10(a)(i)(1) came for consideration. Till then, the Government had steadfastly refused the regularization and ultimately, chose to regularize them only in 1988. Therefore, the stance of the Government in providing the second condition was absolutely correct and by mere subsequent regularization, that too without taking any examination under TNPSC or undergoing any recruitment process and facing general competition from the other candidates, the ad-hoc P.G. Assistants could not be held seniors to those, who were already in service. If, therefore, these ad-hoc P.G. Assistants claim a seniority over and above the TNPSC selected candidates, who were admittedly already in service, it would be ridiculous in the wake of a very clear language of G.O.Ms. No. 1813. It will be further ridiculous as the said condition was accepted by all the P.G. Assistants appointed under Rule 10(a)(i)(1) without a demur and as if this is not sufficient, they did not challenge it at least for six long years and thereafter, upto 2003. All this goes totally against the claim of the appellants. One cannot ignore the fact that some of the appellants did appear for the TNPSC examinations and failed. It will now be preposterous if those failed candidates who were later on regularized, are placed over and above the successful candidates in TNPSC examination and selection process which followed the said examination. This is another reason why the claim of the appellants must fail. [Para 21] [508-C; 509-E-H; 510-A-C]

4. One cannot, at this juncture, ignore the fact that the appellants in their first attempt before the Tribunal,

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A challenged only the first condition regarding the appointment and chose not to challenge the second condition. At that juncture, they had the full opportunity of challenging the second condition also. They conveniently interpreted the G.O.Ms. No. 1813 in their favour, wrongly, and ignored to challenge the second condition. This is not permissible. They could not thereafter turn back and challenge the second condition in the second or third round of litigation. It is for this reason also, that the claim of the appellants must fail.

B [Para 23] [510-G-H; 511-A]

C 5.1. As already pointed out that under Rule 23(a) (i) of the Tamil Nadu State and Subordinate Services Rules, the persons who were in service, could not be rendered junior by the regularization of the ad-hoc candidates at later stage. This G.O.Ms. No. 1813, therefore, has to be interpreted in the light of Rule 23(a)(i), which was a General Rule and applicable to all the appointments. After all, when a clear reference was made to Rule 10(a)(i)(1), which was from the General Rules, there was no reason to make any exception and not to read Rule 23(a)(i) of the General Rules. [Para 24] [511-F-H]

D 5.2. The High Court was absolutely correct in allowing the Writ Petitions, as it did. There is no reason to interfere with the well reasoned judgment of the High Court. [Para 28] [514-G-H]

E *State of Tamil Nadu and Anr. Vs. E. Paripoornam & Ors.* 1992 Supp. (1) SCC 420 and *K. Madalaimuthu and Anr. Vs. State of T.N. & Ors.* 2006(6) SCC 558, relied on.

G *Hindustan Petroleum Corn. Ltd. Vs. Darius Shapur Chennai & Ors.* 2005 (7) SCC 627 and *I.J. Divakar & Ors. Vs. Government of Andhra Pradesh and Anr.* 1982(3) SCC 341, distinguished.

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*V. Srinivasa Reddy Vs. Govt. of A.P.* 1995 Supp. (1) SCC 572; *State of T.N. Vs. E. Paripoornam* 1992 Supp. (1) SCC 420 and *L. Chandrakishore Singh Vs. State of Manipur*, 1999 (8) SCC 287, referred to. A

**Case Law Reference:**

1992 Supp. (1) SCC 420 relied on Para 26 B

2006(6) SCC 558 relied on Para 27

2005 (7) SCC 627 distinguished Para 27

1982(3) SCC 341 distinguished Para 27 C

1995 Supp. (1) SCC 572 referred to Para 27

1999 (8) SCC 287 referred to Para 27

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3582-84 of 2009. D

From the Judgment & Order dated 24.11.2004 of the High Court of Judicature at Madras in W.P. Nos. 21347, 29076 and 29077 of 2003. E

WITH

C.A. Nos. 3585-86 of 2009

Nalini Chidambaran (NP) Indu Malhotra (NP), M.N. Krishnamani, Sunieta Ojha, Vikas Mehta, K.V. Mohan, K.V. Balakrishnan for the Appellants. F

C. Selvaraju, R. Viduthalai, Mary Mitzy, Deepak Jain, Gopal Singh Chauhan, Shiv Prakash Pandey, Promila, Indira, S. Thanajayan, Senthil Jagadeesan and T. Raja for the Respondents. G

The Judgment of the Court was delivered by

**V.S. SIRPURKAR, J.** 1. Leave granted in all the cases. H

A 2. This judgment shall govern SLP (C) Nos. 1128-1130 of 2005 and SLP (C) Nos. 7621-7622 of 2005. All the appellants herein challenge the judgment of the Madras High Court whereby the Writ Petitions filed by them were disposed of with the following direction:-

B "As regards the first category of teachers, those appointed  
C between 01.07.1978 to 28.04.1981, their seniority from will  
be reckoned from the date on which they acquire the  
required qualification, provided they do so within such time  
as extended by the Government and subject to the  
concurrence of Tamil Nadu Public Service Commission.

D As regards the second category of teachers, those  
appointed after 28.04.1981 and selected by the Tamil  
Nadu Public Service Commission their seniority will be  
fixed as per the Tamil Nadu Public Service Commission  
list.

E As regards the third category of teachers, those appointed  
after 28.04.1981 and who have not been selected by the  
Tamil Nadu Public Service Commission and whose  
services have been regularized by GOMs No. 1813 dated  
12.12.1988, their seniority will commence immediately  
after the last person in the list in the second category.

F However, in the circumstances of the case, there will be  
no orders as to costs. Consequently, the connected  
miscellaneous petitions are closed."

G 3. This judgment disposed of Writ Petition Nos. 21163-64/  
2003, 21347/2003, 21640/2003, 21641/2003 and 29075-77/  
2003. One another Writ Petition filed along with these was,  
however, ordered to be de-linked. All these Writ Petitions  
involved the question of inter se seniority of the higher  
secondary school teachers called Post Graduate Assistants  
(hereinafter referred to as "P.G. Assistants" for short) who were  
appointed from the year 1978.

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4. The relevant G.O.Ms. No. 1813, Education Department dated 12.12.1988 was challenged in all these Writ Petitions in so far as it pertained to the fixation of seniority as shown in clause (ii) therein for the sake of clarity it will be better to quote the said G.O.Ms:

"The said posts of teachers have been excluded from the purview of the Tamil Nadu Public Service Commission with reference to the orders issued in the G.O. Ms. Nos. 139 and 1320, Education Department dated 17.8.1987. Recently a separate Teachers Recruitment Board has been constituted for recruitment of teachers to the schools. In the circumstances, the Government direct that the services of the fully qualified P.G. Assistant in Academic subjects, Languages and Physical Directors who were appointed temporarily under the provisions of the Rule 10(a)(i) and who are in service till date shall be regularized from the date of their temporary appointment and subject to the following conditions:

- (i) The candidates regularized by this order will get monetary benefits from the date of issue of this order.
- (ii) They will be placed below the candidates selected by the Tamil Nadu Public Service Commission while ranking their seniority i.e. these candidates will take their seniority below the last candidate selected by the Tamil Nadu Public Commission for the year."

5. Ms. Nalini Chidambaram, learned Senior Counsel appearing on behalf of the appellants along with Ms. Indu Malhotra and Shri M.N. Krishnamani, learned Senior Counsel assailed the judgment mainly on the question that the directions given by the High Court were in breach of the basic principles of service jurisprudence to the effect that the persons entering into the service first have to be conferred with the seniority from

A the date of entering into the service, particularly, when the service is regularized. In other words, the learned counsel urged that the seniority of the petitioners must be reckoned from the date they entered into the service even if they were regularized later on as compared to the others.

B 6. Before approaching this question it will be necessary to see in short the uncontroverted facts.

C 7. The concerned teachers in these appeals can be classified in three groups. The first group is of Post Graduate Assistants who were appointed in between 01.07.1978 and 28.04.1981. Second group is of those Post Graduate Assistants who were duly selected by the Tamil Nadu Public Service Commission (hereinafter referred to as 'TNPSC' for short) and appointed in 1986. The third group is of the Post Graduate Assistants appointed temporarily under *Rule 10(a)(i)(1)* of General Rules of TNPSC {hereinafter referred to as "*Rule 10(a)(i)(1)*" for short} after 28.4.1981 and regularized ultimately by order dated 21-22.12.1988 placing them below the TNPSC candidates of group-II.

E 8. The learned counsel at the beginning of the debate reiterated that the appellants have no quarrel with the seniority awarded to the first group. However, their contest was with the second group of Post Graduate Assistants who were selected by the TNPSC and appointed in the year 1986. The basic challenge is that such candidates in the third group who were appointed prior to 1986 but were regularized in 1988 should be offered the seniority over and above the Post Graduate Assistants belonging to the second group on the basis of their having been regularized in the year 1988. In short, the learned counsel argued that unbroken and continuous service of the Post Graduate Assistants belonging to third group from the date of their appointment though in the ad hoc capacity should be recognized as such over and above those who come in the service for the first time in 1986 by way their selection by TNPSC and the subsequent appointments as a result thereof.

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**Short History**

9. The Government of Tamil Nadu introduced 10+2 system w.e.f. 01.07.1978 in the sense that for passing the higher secondary examination one was required to pass 10th standard examination popularly known as Matriculation examination and thereafter had to pass 11th and 12th standard examination. The 12th standard examination being called Higher Secondary Examination conducted by the Board of Education. In that, the pre-university course run by the colleges which the students could take only after passing the Matriculation i.e. 10th standard examination was detached from the colleges. About 800 matriculation schools were upgraded as Higher Secondary Schools. This naturally resulted in the unprecedented rise in the school students population requiring extra teachers to teach those classes in schools. This became all the more necessary as the decision to introduce 10+2 pattern was taken suddenly while there were no statutory Rules and, therefore, the appointments were made to the posts of Post Graduate Assistants from amongst those teachers who were earlier called BT Assistants and in addition to that possessed Master degrees. Some such teachers even did not have B.Ed qualification.

10. After exhausting those teachers remaining posts came to be filled up by calling the applications through Employment Exchanges. Ultimately, these teachers who were who were so appointed were made permanent with the help of special Rules which were framed in exercise of power under Section 309 of the constitution of India vide G.O.Ms. No. 720, Education Department dated 28.04.1981. This G.O.Ms. had prescribed the qualification for the Post Graduate Assistant as Master degree with B.Ed. In the special Rules one Rule 11 was introduced which were as under:

**“Rule 11:** *Savings-Notwithstanding anything contained in Rule 2 and 6 above, the service of these persons who are holding, on the date of issue of these Special Rules, the*

A post of Head Masters and Head Mistresses in Academic  
 subjects, teachers in Languages and Physical Directors  
 and Physical Directresses in Higher Secondary School  
 and who possess the qualifications prescribed for such  
 category in the Annexe shall be regularized after obtaining  
 B the concurrence of the Tamil Nadu Public Service  
 commission under the Tamil Nadu Service Commission  
 Regulations, 1954 and in respect of those persons who  
 do not possess the qualifications prescribed for such  
 category in the Annexe and who are holding such posts  
 C on the date of issue of these Special Rules shall be  
 regularized only after they acquire the said qualifications  
 and after obtaining concurrence of Tamil Nadu Public  
 Service Commission under the Tamil Nadu Public Service  
 Commission Regulations, 1954 provided they acquire the  
 D said qualifications within a period of five years from 1st  
 July, 1978. If they fail to acquire the said qualifications  
 within the specified period they shall be replaced by  
 suitable qualified candidates."

11. Therefore, as per the above Rule those who already  
 E had the Master degree and B.Ed. were directed to be  
 regularized straightway. Such others who did not have that  
 qualification were given five years' time w.e.f. 01.07.1978 to  
 acquire the qualification and on acquisition of the qualifications,  
 they were directed to be regularized only after getting  
 F concurrence from TNPSC. There is no dispute that the  
 contesting respondents herein had acquired such qualifications  
 before 30.06.1983 and their services were regularized.

12. The Government also temporarily appointed some  
 G teachers after 28.4.1981, who had the necessary qualifications  
 under Rule 10(a)(i)(1). This Rule provides for *ad hoc*  
 appointments. They were so appointed to meet the emergent  
 situation of shortfall created because of the application of new  
 pattern of 10+2. They were not selected by TNPSC. Their  
 H appointments were prior to 1986.

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13. At this stage the TNPSC started taking steps to fill up the 660 posts of Post Graduate Assistants by holding examination and issued an advertisement dated 5.6.1984. On 14.8.1984 G.O.M.S No.1049 was issued informing that all the P.G. Assistants appointed after 28.4.1991 would have to take up the examination by TNPSC and without that such teachers could not continue. However, representations were made by these temporarily appointed teachers under Rule 10(a)(i)(1) through their Associations. These representations were for the purposes of regularizing the services of these Post Graduate Assistants who were appointed in ad hoc manner under Rule 10(a)(i)(1) without taking the proposed examination by TNPSC. This representation was sent to the Government which ultimately forwarded it to TNPSC for its view. However, the representation was negated and ultimately the TNPSC held the examination for filling up the posts of Post Graduate Assistants in the year 1985. Thereby the ad hocly appointed Post Graduates Assistants' regularization was rejected. It was notified by the Government that those candidates who were appointed as Post Graduate Assistants before 28.04.1981 need not apply for those posts as almost all the candidates had qualified themselves within five years and only a few were left out. (The Government ultimately extended the time by two years from 1983 to 1985 and from 1985 to 1987 for enabling these persons to acquire the qualifications) Those who could not acquire these qualifications were admittedly not included in the impugned panel. As has already been stated above the appellants have no quarrel with this particular category of teachers.

14. At this stage, a Writ Petition came to be filed before the High Court by some third group teachers seeking injunction against holding of that examination by the TNPSC and filling the posts thereby. However, even that prayer for injunction was negated by the High Court and ultimately the TNPSC after holding the examination selected the second category of the Post Graduate Assistants and appointed them on 8.8.1986 and

A ultimately they became the members of the Service from that date. It is relevant to mention here that at that time also the appellants had not become members of the service since they were only ad hoc appointees under Rule 10(a)(i)(1). It is also relevant to note that these appellants had the option to compete  
B in the said examination. Some who appeared in TNPSC examination failed to qualify and the rest did not bother to take the examination at all. They thereby shunned from competing against the fresh candidate appearing in the TNPSC examination. However, the concentrated efforts for regularizing  
C of such candidates who were appointed under Rule 10(a)(i)(1) in the ad hoc manner were continued by their Association and as a result thereof they were ultimately regularized by G.O.Ms. dated 12.12.1988 on a condition that they would not be entitled for monetary benefits and would have to take their seniority  
D below the last candidate selected by TNPSC in the examination. They accepted this conditional regularization without demur.

15. Before this G.O.Ms. No. 1813 dated 12.12.1988, two other G.O.Ms. were issued, they being G.O. No. 1320 dated  
E 17.8.1987 and G.O. No. 1671 dated 3.11.1988. We would, however, not be concerned with these G.Os. in the present controversy. After the G.O.Ms. dated 12.12.1988 was brought in, the third category of P.G. Assistants appointed under Rule 10(a)(i)(1) filed Original Application bearing O.A. No. 3760 of  
F 1991 before the Tamil Nadu Administrative Tribunal (hereinafter referred to as "the Tribunal" for short). Very significantly, in this Original Application, the P.G. Assistants appointed under Rule 10(a)(i)(1) did not challenge the second condition regarding seniority imposed in G.O.Ms. No. 1813 to the effect that they  
G would be placed below the candidates selected by TNPSC, while ranking their seniority. The said Original Application was allowed, thereby, the past monetary benefits were granted to these P.G. Assistants. Thus, these P.G. Assistants clearly accepted the second condition regarding their seniority.  
H Similarly, another Original Application bearing O.A. No. 3617

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of 1994 came to be filed by some other P.G. Assistants, claiming relief of regularization of their services from the date of their appointment instead of their obtaining the qualification. However, the Tribunal did not grant that relief and merely granted the relief regarding the increments, selection grade etc. w.e.f. their initial appointment but not in respect of seniority. A further Writ Petition came to be filed vide W.P. Nos. 2911 and 3041 of 1998, wherein, the High Court, by its judgment dated 24.3.1998, modified the order of the Tribunal holding that the Rules should be relaxed from their date of initial appointment, but they could not claim seniority over the P.G. Assistants, who were appointed with the requisite qualification nor could they claim any arrears prior to their obtaining the qualification. On 9.9.1999, a further G.O.Ms. No. 276 was issued on the basis of the High Court judgment, whereby, it was ordered that the P.G. Assistants, who were initially appointed without necessary qualification, shall be regularized only from the date on which they obtained the qualification and their seniority shall be reckoned from the date of their regularization. However, as a concession, service rendered for the period prior to their regularization was to be taken into consideration only for the purpose of calculating the pension. Therefore, at least from 1988 till 1998, the things remained as they were in respect of the seniority of the P.G. Assistants appointed under Rule 10(a)(i)(1).

16. In between, there is one more development, i.e., TNPSC appointed P.G. Assistants filed two Original Applications, they being O.A. No. 5205 of 1999 and 3638 of 2000, assailing the proceedings in Na. Ka. No. 39470/W1/2/98 dated 24.8.1998 of the Director of School Education, whereby they claimed seniority over and above the P.G. Assistants appointed under Rule 10(a)(i)(1). In their O.A., they had also claimed the promotions after fixing up the seniority over and above P.G. Assistants appointed under Rule 10(a)(i)(1). That Original Application was dismissed by the Tribunal by its judgment dated 3.7.2002. On 9.4.2003, however,

A the Director of School Education issued a communication being Na. Ka. No. 136188/W18/02, clarifying that if the P.G. Assistants were appointed in the same year as that of the TNPSC selected P.G. Assistants, then the TNPSC P.G. Assistants will rank senior to the non-TNPSC candidates. But  
B if different modes were adopted for recruitment in different years, the TNPSC candidates of a later year, cannot rank senior to a candidate recruited in the earlier year by a non-TNPSC mode. Further on 18.6.2003, another letter came to be issued by Director of School Education, calling for the list of  
C candidates for preparation of Panel for the post of Head Masters. In pursuance thereto, a list of P.G. Assistants appointed upto 31.5.1982 was issued. However, the Director of School Education prepared a Panel of 393 candidates for the post of Higher Secondary Head Masters, which did not include the names of the third category candidates, i.e., the  
D P.G. Assistants appointed under Rule 10(a)(i)(1). In this list, the candidates, whose names appeared from S.Nos. 1-143 were admittedly senior to these P.G. Assistants appointed under Rule 10(a)(i)(1) and their seniority was and is not being disputed. However, according to the present P.G. Assistants  
E appointed under Rule 10(a)(i)(1), the candidates whose names appeared from S.No. 143 onwards, were the P.G. Assistants selected by TNPSC and appointed in 1986.

17. They claim that all those P.G. Assistants should be  
F ranked junior to the P.G. Assistants appointed under Rule 10(a)(i)(1), as these TNPSC appointed P.G. Assistants had acquired qualification after their appointments and further that though they were regularized w.e.f. 12.12.1988, their regularization should have been given effect to from the date of their appointment. Hence, challenging this Panel, number of  
G Original Applications were filed before the Tribunal, they being O.A. Nos.2155, 2255, 2262, 2315, 2370, 2396 & 2397 of 2003 by various P.G. Assistants individually. Very significantly, their representative body, however, was not a party to these original applications either in its capacity as an applicant or as  
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respondent. The Tribunal, by its order dated 18.7.2003, allowed the said O.As. It was held by the Tribunal that the petitioners, who were initially appointed under Rule 10(a)(i)(1) in between 1981 and 1982 and had all the necessary qualification and whose services were later on regularized on 12.12.1988, had to be placed over and above the corresponding P.G. Assistants who were appointed earlier but without necessary qualification and had acquired the qualification later and whose services were regularized after the acquisition of qualification (in short, group two P.G. Assistants here). The Tribunal also held that the ranking given by the TNPSC and the placement of candidates in the seniority list was not relevant to the issues, as the TNPSC candidates came in service later on, as compared to the P.G. Assistants appointed under Rule 10(a)(i)(1). The Tribunal, therefore, directed the State Government and the Director of School Education to revise the Panel for the post of Head Masters from S.No. 143 onwards in such a way that the P.G. Assistants appointed under Rule 10(a)(i)(1) are placed in the appropriate place in accordance with their seniority, meaning, their date of appointment.

18. This judgment of the Tribunal was challenged by filing various Writ Petitions in the High Court, those Writ Petitions being W.P. Nos. 21163, 21164, 21347, 21640, 21641, 19075 to 29077 of 2003 and 9719 of 2004. Later on, the last mentioned Writ Petition was separated. The High Court invited the counter affidavits from the respondents, more particularly, from the State Government and its Authorities. By the impugned judgment, the Writ Petitions filed by the TNPSC selected P.G. Assistants were allowed. While disposing of the Writ Petitions and allowing them, the High Court has given the directions which are contained in para 2 of this judgment. It is this judgment, which has fallen for our consideration in the present case.

19. As has already been stated, the contention of the appellants is that they had all the qualifications for holding the posts of Post Graduate Assistants when they were appointed

A under Rule 10(a)(i)(1) and their service was also without any breaks and they were ultimately regularized in the year 1988. Therefore, though the act of the State Government in regularizing them was correct, the provision that their seniority will be below those who were selected by TNPSC in 1986, is not correct. Ms. Nalini Chidambaram, Learned Senior Counsel appearing on behalf of the appellants, alongwith Ms. Indu Malhotra and Mr. M.N. Krishnamani, Learned Senior Counsel, firstly urged that when a candidate is appointed under Rule 10(a)(i)(1) on *ad-hoc* basis and is subsequently regularized, then ordinarily, his seniority has to be reckoned from the date when he was first appointed, provided he has all the necessary qualifications for the job. There can be no dispute with this proposition generally, however, it must be borne in mind that though the appellants herein had the necessary qualifications at the time of their initial appointment under Rule 10(a)(i)(1) and though they were subsequently regularized also, the regularization was conditional regularization, which was done way back in 1988. The condition regarding the seniority was explicit in the said regularization, which is clear from the mere reading of the G.O.Ms. No. 1813. It cannot be forgotten that this regularization was all along accepted by the present appellants. Once they chose to accept the regularization which was conditional, then it would have to be borne in mind that they have accepted the conditions also. It cannot be countenanced that only the favourable part of the G.O.Ms. was accepted by them and the unfavourable part was rejected. If they had to do it, they had to challenge the G.O.Ms. immediately. They did not do it, instead they waited almost for six years, when for the first time, they came out with an Original Application vide O.A. No. 3617 of 1994. Again, when the matters were decided in the Writ Petition Nos. 2911 and 3041 of 1998 on 24.3.1998 and the seniority prayed for on the basis of initial appointment was refused to them, they kept quiet, only to raise the same demand again in 2003 when the Panel was prepared. The Panel is absolutely correct in the light of G.O.Ms. No. 1813. The appellants merely raised a lame plea that they did not challenge

the G.O.Ms. No. 1813, as they were expecting themselves to be placed over and above the TNPSC selected candidates. Such could never be the position in the wake of plain language of G.O.Ms. No. 1813. This is one of the main reasons why the claim of the appellants has to be rejected. The aspect of conditional regularization, therefore, had to be kept in mind.

20. The further sinister silence for about six years and thereafter, till 2003 inspite of adverse judgments, also goes against the appellants. The Learned Senior Counsel for the appellants very heavily relied on the change of the Government's stand. It was pointed out that the Department had all along given the interpretation that the second condition in G.O.Ms. No. 1813 applied only when the candidates appointed under Rule 10(a)(i)(1) and the TNPSC selected candidates came in the same year. That may be so. However, the parties cannot be allowed to act on the impressions, when the original text of the G.O.Ms. says otherwise. There was nothing in the language of the G.O.Ms. No. 1813 that the second condition would apply when the appointments of P.G. Assistants under Rule 10(a)(i)(1) and the TNPSC selected P.G. Assistants would be in the same year. That was wholly wrong. Even clarification by the Director of School Education had given a wrong position. That error could be perpetuated. In our opinion, it was rightly corrected later on when the stand was taken that all these P.G. Assistants would be below the TNPSC selected P.G. Assistants.

21. This stand is correct, as though the appellants were fully qualified P.G. Assistants at the time of their initial appointment after 1981, the fact of the matter is that they never faced any competition. They studiously and conveniently desisted from taking the examination, though it was made very clear to them that they would have to take the examination. It was feebly argued before us by the Learned Senior Counsel for the appellants that they had no opportunity for doing so, as the last date for the examination had already passed. We do not understand as to what the appellants were waiting for. There

A was a general advertisement issued and there was no question  
of presuming that these P.G. Assistants would in any manner  
be exempted from taking the examination of TNPSC without  
whose selection, they could never enter the Government service.  
Under the circumstances, it was for these P.G. Assistants to  
B appear for the examination and prove themselves. They had  
come in ad-hoc manner and, therefore, they could not expect  
regularization straightaway. Under these circumstances, they  
remained on the roll in their ad-hoc capacity and, therefore,  
were not the members of the service. Rule 23(a)(i) of the Tamil  
C Nadu State and Subordinate Services Rules provides as  
under:-

“23(a)(i) *Date of commencement of probation of persons first appointed temporarily:-* If a person appointed temporarily either under sub-rule (a) or sub-rule (b) of the rule 10 to fill a vacancy in any service, class or category otherwise than in accordance with the rules governing appointment thereto, such vacancy being a vacancy which may be filled by direct recruitment, is subsequently appointed to the service, class or category in accordance with the rules, he shall commence his probation if any, in such category either from the date of his first temporary appointment or from such subsequent date, as the appointing authority may determine. If the post is one to which appointment may be made by transfer, and the person who had been appointed thereto either under General Rule 10(a) or 10(d) is subsequently recruited thereto by transfer and included in the list of approved candidates, the appointing authority may in his discretion, allow such person to commence his probation if any, from the date of his first temporary appointment or from

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such subsequent date, as the appointing authority may determine:

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Provided that the date so determined by the appointing authority to commence probation in this clause, shall not be earlier than the date of commencement of probation of the junior most person already in service.

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Provided further that on the date so determined by the appointing authority to commence probation in this clause, the person shall not only possess all the qualifications prescribed for appointment to the service, but also be fit for inclusion in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or the appointing authority, as the case may be.

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One look at the first proviso shows that in case of an ad-hoc employee, he cannot claim any seniority to the junior most person already in service. The words "junior most person already in service" in the proviso are extremely important. All the TNPSC P.G. Assistants were already in service, when the question of regularization of the P.G. Assistants appointed under Rule 10(a)(i)(1) came for consideration. Till then, the Government had steadfastly refused the regularization and ultimately, chose to regularize them only in 1988. Therefore, the stance of the Government in providing the second condition was absolutely correct and by mere subsequent regularization, that too without taking any examination under TNPSC or undergoing any recruitment process and facing general competition from the other candidates, the ad-hoc P.G. Assistants could not be held seniors to those, who were already in service. If, therefore, these ad-hoc P.G. Assistants claim a seniority over and above the TNPSC selected candidates, who were admittedly already in service, it would be ridiculous in the wake of a very clear language of G.O.Ms. No. 1813. It will be further ridiculous as

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A the said condition was accepted by all the P.G. Assistants appointed under Rule-10(a)(i)(1) without a demur and as if this is not sufficient, they did not challenge it at least for six long years and thereafter, upto 2003. All this goes totally against the claim of the appellants. We also cannot ignore the fact that

B some of the appellants did appear for the TNPSC examinations and failed. It will now be preposterous if those failed candidates who were later on regularized, are placed over and above the successful candidates in TNPSC examination and selection process which followed the said examination. This is another reason why the claim of the

C appellants must fail.

22. Mr. C. Selvaraju, Learned Senior Counsel, appearing on behalf of the contesting respondent, pointed out one more pertinent fact before us. According to him, before the promotion

D Panel was prepared in 2003, there was already a seniority list existing, wherein the first group of P.G. Assistants were placed on top and below them, the second group of P.G. Assistants selected by TNPSC were placed and it is only after them that the appellant P.G. Assistants, who were appointed under Rule

E 10(a)(i)(1) were shown. He pointed out that the said seniority list was never challenged by the present appellants and they only claimed the benefit of seniority, when the Panel for promotions was prepared for the first time in 2003. Thus, right from 1988, when they were regularized, they accepted the

F second condition, obtained the regularization and thereafter, for the first time, chose to challenge the seniority list indirectly in 1994 and thereafter, directly in 2003. This, they could not do. The submission is undoubtedly, sound.

G 23. We cannot, at this juncture, ignore the fact that the appellants in their first attempt before the Tribunal, challenged only the first condition regarding the appointment and chose not to challenge the second condition. At that juncture, they had the full opportunity of challenging the second condition also. They conveniently interpreted the G.O.Ms. No. 1813 in their favour,

H and in our opinion, wrongly, and ignored to challenge the second

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[V.S. SIRPURKAR, J.]

condition. This is not permissible. They could not thereafter turn back and challenge the second condition in the second or third round of litigation. It is for this reason also, that the claim of the appellants must fail.

24. Speaking on the interpretation of G.O.Ms. No. 1813, the Learned Senior Counsel appearing on behalf of the appellants, led a great stress on the language of second condition, more particularly, on the last 3 words, they being "for the year". For the convenience sake, we will quote that condition:-

"They will be placed below the candidates selected by the TN Public Service Commission while ranking their seniority, i.e., those candidates selected by the TNPSC for the year."

Relying on this, the Learned Senior Counsel contended that, therefore, the appellants were quite justified in interpreting that the seniority rule will apply only and only if the candidates appointed under Rule 10(a)(i)(1) and the TNPSC selected candidates were appointed in the same year. The Learned Senior Counsel took the argument further and submitted that since the appointment of the TNPSC selected candidates came only in the year 1986, only those candidates under Rule 10(a)(i)(1) would be rendered junior who were appointed after 1986, but those, who were appointed earlier, would have to be held to be senior to the TNPSC selected candidates. We are not impressed by this, as we have already pointed out that under Rule 23(a) (i) of the Tamil Nadu State and Subordinate Services Rules, the persons who were in service, could not be rendered junior by the regularization of the ad-hoc candidates at later stage. This G.O.Ms. No. 1813, therefore, has to be interpreted in the light of Rule 23(a)(i), which was a General Rule and applicable to all the appointments. After all, when a clear reference was made to Rule 10(a)(i)(1), which was from the General Rules, there was no reason to make any exception and not to read Rule 23(a)(i) of the General Rules. For this

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A reason, the argument must fail.

25. Mr. Senthil Jagadeesan, Learned Counsel appearing on behalf of the respondents urged that the act of regularization of these P.G. Assistants under Rule 10(a)(i)(1) itself was contradictory to the Service Rules, inasmuch as it was in breach of Rule 2(c), 4, 5 and 11 of the Tamil Nadu Higher Secondary Education Service Special Rules and that was subject to challenge in Writ Petition No. 9719 of 2005. Since it is already a pending matter before the High Court and since that Writ Petition is already segregated from the group of Writ Petitions, we do not wish to offer any comment on that issue. This is more particularly so, because as the things stand today and at least insofar as the present controversy is concerned, it relates only to the fact of seniority. The said contention is not apposite to the present case.

26. Mr. C. Selvaraju, Learned Senior Counsel for the contesting respondent invited our attention to the decision in case of *State of Tamil Nadu and Anr. Vs. E. Paripoomam & Ors.* reported in 1992 Supp. (1) SCC 420, which was the case pertaining to the seniority of the teachers, who were appointed temporarily. Those were also the teachers appointed under Rule 10(a)(i)(1) of the Tamil Nadu State and Subordinate Services Rules. Subsequently, they were regularized for the limited purpose of increments. The order of regularization itself denied their previous service for the purpose of determining the seniority. This Court came to the conclusion that while determining the seniority, the Court could not count that service for the purpose of seniority. In para 14, this Court observed:-

"14. Apart from that, Rule 10(a)(i)(1) provide for making of 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. Such appointments are made otherwise than in accordance with the procedure prescribed under the Rules. In the instant case, the respondents were

appointed temporarily and otherwise than in accordance with the Rules. They were later selected along with others for direct recruitment by the Public Service Commission. they were not entitled to count their temporary service for seniority. In A.P.M. Mayankutty Vs. Secretary, Public Service Department, this Court observed that the services rendered by the applicants under Rule 10(a)(i)(1) cannot be considered for the purpose of seniority, as such appointment is a matter of stop-gap, emergency or fortuitous arrangement.”

Earlier, in para 13, referring to Rule 35(a), according to which the seniority is fixed, the Court proceeded to observe:-

13. ....The service rendered in the temporary post is available either for earning increments or for commencement of probation. That would be clear from Rule 23(a). Consistent with the Rule 23(a), the Government in the order of regularization has directed that the incumbents are eligible for increments from the date of their regularization, as they are fully qualified to hold the post on that date. The increments already sanctioned to them during their service as temporary Junior Professors prior to regular appointment have been ratified by the said order. *The High Court was plainly in error in ignoring the statutory rules and the terms and conditions of the order of regularization of services.*” (Emphasis supplied)

The emphasized portion, undoubtedly, presents out a clear position that the language of the G.O.Ms., offering regularization, is of utmost importance. Therefore, it is clear that that second condition will have to stay as it is.

27. In a recent decision in *K. Madalaimuthu and Anr. Vs. State of T.N. & Ors.* reported in 2006(6) SCC 558, this Court

A again reiterated the principles of fixation of seniority in case of the persons, who were temporarily appointed under Rule 10(a)(i)(1). This Court relied on the decision in *V. Srinivasa Reddy Vs. Govt. of A.P.* reported in 1995 Supp. (1) SCC 572, as also, *State of T.N. Vs. E. Paripoornam* reported in 1992

B Supp. (1) SCC 420. Both these cases dealt with Rule 10(a)(i)(1). Distinguishingly, relying upon the case law relied by the respondents, i.e., 1999 (8) SCC 287 *L. Chandrakishore Singh Vs. State of Manipur*, this Court came to the conclusion

C that the High Court had erred in holding that the temporary appointees under Rule 10(a)(i)(1) were entitled to the seniority right from the date of their first appointment and not from their regularization. Though the controversy involved is slightly different, the general principles would undoubtedly apply. We have seen the ruling cited on behalf of the appellants in 2005

D (7) SCC 627 *Hindustan Petroleum Corpn. Ltd. Vs. Darius Shapur Chennai & Ors.* We do not find this case to be relevant. It only deals with the general principle that the statutory authority cannot be permitted to support its order relying on or on the basis of statements made in the affidavit de-hors the order or de-hors the record. We have already indicated that such is not

E the state of affairs in the present case. The second decision relied upon by the appellants is *I.J. Divakar & Ors. Vs. Government of Andhra Pradesh and Anr.* reported in 1982(3) SCC 341, which suggests that the Government has the power to cancel the recruitment even after TNPSC examination and

F regularize the candidates appointed under Rule 10(a)(i)(1) for compelling necessity. That may be so. However, the factual situation is entirely different. Such thing has not happened nor is it anybody's demand.

G 28. Thus, the legal position is clear. In our opinion, the High Court was absolutely correct in allowing the Writ Petitions, as it did. We do not find any reason to interfere with the well reasoned judgment of the High Court. All the appeals fail and are dismissed. No order as to the costs.

H G.N.

Appeals dismissed.