

**(2014) 11 MAD CK 0589**

**Madras High Court**

**Case No:** Writ Petition Nos. 9350 and 13629 of 2009

Swarnam J. Natarajan

APPELLANT

Vs

The High Court of Judicature at  
Madras

RESPONDENT

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**Date of Decision:** Nov. 28, 2014

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 16(1), 16(4), 226
- Evidence Act, 1872 - Section 123, 124

**Citation:** (2015) 1 MLJ 645

**Hon'ble Judges:** V. Dhanapalan, J; G. Chockalingam, J

**Bench:** Division Bench

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**Judgement**

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

Petitioners have filed these Writ Petitions, praying for issuance of a writ of certiorarified mandamus, calling for the records of the first respondent relating to R.O.C. No. 17/2009-Con. B2 dated 5.5.2009, to quash the same in so far as it promotes and posts respondents 3 and 4 as Civil Judges (Senior Division) in the Pondicherry Judicial Service and consequently direct the first respondent to fix the seniority of the Civil Judges (Junior Division), Pondicherry Judicial Service, as per the merit list prepared by it, pursuant to Notification No. 87/2001, dated 6.8.2001, and to further consider and promote the petitioners as Civil Judge (Senior Division) with effect from 5.5.2009, with all consequential benefits flowing therefrom.

2. The High Court of Madras, by its notification No. 87/2001, dated 06.08.2001, invited applications for selection and appointment to six vacancies, including two anticipated vacancies, in the post of Civil Judge (Junior Division)/Judicial Magistrate I Class in the Pondicherry Judicial Service, to be made by direct recruitment, under the provisions of Pondicherry Judicial Service (Cadre and Recruitment) Rules, 1996,

hereinafter referred to as "the Rules". As per the said notification, 3 vacancies were reserved for Other Backward Class (OBC) Category and the remaining three for Other Community (OC), namely, Unreserved Category.

3. Petitioners applied to the above posts and participated in the written and viva voce examination. While the petitioner in W.P. No. 9350 of 2009 belongs to "Kuyavar" community, which is notified by the Government of Puducherry as an Other Backward Class (OBC), the petitioner in W.P. No. 13629 of 2009 belongs to General Category. In the results published, the petitioner in W.P. 9350 of 2009 stood first in the order of merit by securing 230 marks in the written examination and 47.16 marks in the viva voce, thus securing a total of 277.16 marks, and the petitioner in W.P. No. 13629 of 2009 stood third in Unreserved Category, securing 203 marks in written examination and 55.50 marks in viva voce, thereby securing 258.50 marks. The marks obtained by the candidates were notified by the High Court in its proceedings ROC No. 82/99/CON. B1, dated 10.10.2002.

4. Pursuant to the recommendations of the High Court, the Government of Pondicherry, the second respondent, issued the offer of appointment vide No. 21016/1/2--2-LD, dated 09.12.2002, and, after acceptance of the same, the appointment order was communicated individually vide No. 48-12/2001-LD (PJS) dated 27.01.2003, pursuant to which the petitioners reported for duty in the year 2003.

5. It is the specific case of the petitioner in W.P. No. 9350 of 2009 that even though he belonged to OBC Category, he was selected against Unreserved Category and three other OBC candidates were selected against the OBC vacancies.

6. Since the date of appointment, the petitioners have not been communicated any seniority list in the cadre of Civil Judge (Junior Division)/Judicial Magistrate I Class. They have been appointed in accordance with the Pondicherry Judicial Service (cadre and recruitment) Rules, 1996.

7. When the events stood thus, there arose two vacancies in the post of Civil Judges (Senior Division) under Pondicherry Judicial Service and two more vacancies were likely to arise for promotion from among the Civil Judges (Junior Division). Respondents 3 and 4, who were ranked below the petitioners in the merit list of Civil Judges (Junior Division) and appointed against the OBC vacancies, have been considered and recommended by the first respondent to the second respondent for promotion as Civil Judges (Senior Division) in the existing vacancies.

8. Hence, these Writ Petitions.

9. First respondent has filed a counter affidavit in W.P. No. 9350 of 2009, stating as under:

9.1. The promotive post of Civil Judge (Senior Division) is by selection on the basis of merit-cum-seniority from amongst the category of Civil Judge (Junior Division on

consideration of entries in Annual Confidential Reports, inclusive of vigilance report; evaluation of the judgments rendered by the individual concerned and work done statement as per Rule 8(6) of the Puducherry Judicial Services (Cadre and Recruitment) Rules, 2008. The duly constituted Selection Committee considered seven eligible candidates, including the writ petitioner, as per the existing rules on the basis of merit-cum-seniority, suitability, service records and other records of each candidate, recommended drawal of panel for promotion to the post of Civil Judge (Senior Division), wherein third and fourth respondents were assigned ranking as Sl. No. 1 and 2 respectively. It was also recommended to keep the panel alive for a period of one year. The writ petitioner was assigned with ranking as Sl. No. 4 in the said panel. Accordingly, third and fourth respondents, who were ranked as one and two respectively, had been issued with promotion order, dated 05.05.2009, which is under challenge in this writ petition.

9.2. The High Court issued a Notification No. 87/2001, dated 06.08.2001, calling for applications for appointment against six vacancies, including two anticipated vacancies in the post of Civil Judge (Junior Division)/Judicial Magistrate First Class in the Pondicherry Judicial Services, to be made by direct recruitment under the provisions of the Rules, 1996, out of which, three were reserved for Other Backward Class (OBC) category, while three are meant for Unreserved category (UR). The distribution of the said vacancies as per the letter dated 11.07.2001 of the Government of Pondicherry in D.O. No. A21016/1/2001-LD is as follows:

1. OBC
2. OBC
3. OBC
4. UR
5. UR
6. UR

9.3. 22 candidates were called for interview, out of which 20 candidates attended the interview on 13.06.2002. The writ petitioner, who belonged to OBC category obtained 230 marks in the written test and 47.16 marks in oral interview, which was the highest mark. As such, he was selected under the Unreserved category. Third and fourth respondents obtained total marks of 245 and 242.66 respectively, but stood as Rank No. 1 and 2 of OBC candidates. Ms. Sofina Devi was ranked as Sl. No. 7 and hence she was selected against third vacancy of OBC category. The said list containing the marks of the candidates was published in the Notice Board on 10.10.2002. The Government of Pondicherry was requested to appoint the provisionally selected candidates, numbering six, in D.O. Lr. No. 82/99-Con-B1, dated 10.10.2002.

9.4. By virtue of communication, dated 17.10.2002, in D.O. Lr. No. 82/99-Con-B1, the list of six provisionally selected candidates on their merit basis was forwarded to the Government of Pondicherry as follows:

1. Thiru G. Senthil Kumar
2. Selvi S. Mohana Kumari
3. Selvi V. Sofna Devi
4. Thiru Swarnam J. Natarajan
5. Thiru S. Isvarane
6. Tmt. G. Thirupurambikai.

9.5. By way of clarification to the letter of Government of Pondicherry dated 24.10.2002, it was informed in and by D.O. Lr. No. 82/99-Con-B1, dated 28.10.2002, that according to the roster, the arrangement of the candidates rank-wise was proper. On the basis of such ranking of the selected candidates, posting orders in Notification No. 13/2003, dated 29.01.2003, were issued, after appointment orders were issued by the Government of Pondicherry.

10. Second respondent/Government of Pondicherry has filed a counter affidavit, stating as follows:

10.1. In exercise of the powers conferred by Article 309 of the Constitution read with Government of India, Ministry of Law and Justice and Company Affairs (Department of Justice) Notification No. 30/16/76/Jus. dated 31.08.1979, the Administrator, on the recommendations of the Hon"ble High Court, has made the Puducherry Judicial Service (Cadre and Recruitment) Rules, 2008, issued vide Notification in G.O. Ms. No. 8/2008-LD, dated 08.04.2008, superseding the earlier rules of 1996.

10.2. In order to fill up the vacancies in the grade of Civil Judge (Junior Division)/Judicial Magistrate First Class in the Puducherry Judicial Service, the Hon"ble High Court, Madras, which exercises administrative control over the judiciary in the Union Territory, had issued Notification No. 87/2001, dated 06.08.2001, inviting applications from eligible candidates, for filling up of six vacancies, including two anticipated vacancies, three vacancies reserved for OBC and three unreserved vacancies.

10.3. The Hon"ble High Court, in their letter No. 82/99-Con. B1, dated 10.10.2002, addressed to this administration, had informed that the High Court, after conducting the written and viva voce examination for filling up of six posts of Civil Judge (Junior Division)/Judicial Magistrate First Class in the Puducherry Judicial Service by direct recruitment and after taking into consideration their merit, ability and performance both in the written as well as viva voce examination and all another relevant factors, had selected six candidates provisionally for appointing

them as Civil Judge (Junior Division)/Judicial Magistrate First Class against the vacancies based on the roster as follows:

1. Thiru G. Sendil Kumar-OBC
2. Selvi S. Mohana Kumari-OBC
3. Selvi V. Sofana Devi-OBC
4. Thiru Swarnam J. Natarajan-UR (OBC candidate selected against unreserved quota)
5. Thiru S. Isvarane-UR
6. Tmt. G. Thirupurambikai-UR

10.4. Pursuant to the notice in ROC No. 82/99/Con. B1, dated 10.10.2002 of the Hon'ble High Court, Madras, the second respondent, vide letter No. 21016/1/2002-LD, dated 24.10.2002, had communicated the order of merit of the selected candidates for the post of Civil Judge (Junior Division) as follows:

1. Thiru Swarnam J. Natarajan
2. Thiru S. Isvarane
3. Tmt. G. Thirupurambikai
4. Thiru R. Venkatasubramanian
5. Thiru G. Sendil Kumar
6. Selvi V. Sofana Devi both securing same marks

Selvi S. Mohana Kumari

10.5. In the said letter dated 24.10.2002, it is stated that the rosters are intended to be an aid at determining the number of vacancies to be reserved and are not meant to be used for determining the order of appointment or seniority. The relative seniority of all direct recruits will have to be determined by order of merit in which they are selected for such appointment on the recommendations of the Selection Committee. Moreover, the 1996 Rules provide that a list of suitable candidates shall be prepared in the order of merit on the basis of aggregate of marks secured in the competitive examination including viva voce. In the High Court notification calling for applications, it has been clearly stated in para 8(a) relating to the procedure of selection that the selection will be made based on the result of the written examination and viva voce examination i.e., the selection will be made on the basis of the total marks obtained by the candidates. The proposal of the High Court was submitted to the Government for approval in the matter of appointing the selected candidates as Civil Judge (Junior Division)/Judicial Magistrate First Class in the puducherry Judicial Service. After approval by the Government, they were issued

with offer of appointment vide Order No. A21016/1/2002-LD, dated 09.12.2002. On obtaining their acceptance and, after subjecting them to medical fitness, they were appointed as Civil Judge (Junior Division)/Judicial Magistrate First Class in the Puducherry Judicial Service with effect from the date of their assumption of charge of the said office, vide Office Order No. 48-12/2001-LD(PJS), dated 18.12.2002 and 27.01.2003 of the Law Department, Puducherry. The Hon"ble High Court, Madras, in their Notification No. 13/2003, dated 29.01.2003, had issued posting orders to all the six candidates.

10.6. As per Rule 8(6) of Rules 2008, the method of recruitment to the post of Civil Judge (Senior Division) is by promotion, by selection on the basis of merit-cum-seniority from among the category of Civil Judge (Junior Division), by the High Court on the basis of the following criteria:

- (i) Entries in the Annual Confidential Reports, inclusive of Vigilance Report, if any.
- (ii) Evaluation of judgments rendered by the candidate in the preceding five years.
- (iii) Workdone statement for preceding five years.

10.7. Based on the above said rules, the selection to the post of Civil Judge (Senior Division) was processed by the Hon"ble High Court, Madras, and communicated to the Government of Pondicherry, for issue of orders. After approval by the Government, the petitioner and the respondents 3 to 5 were appointed in the post of Civil Judge (Senior Division) on various dates.

10.8. This respondent would abide by the directions of the Hon"ble Court, if any passed, in the writ petition, in the interest of justice.

11. Respondent 3 has filed a counter affidavit, stating as under:

11.1. Petitioner has filed this Writ Petition on the premise that the promotion of a Civil Judge (Junior Division) in the Pondicherry Judicial Service to the post of Civil Judge (Senior Division) is on the basis of seniority by claiming that he is the top scorer of marks in the written examination and viva voce held. Therefore, the claim of the petitioner that unless the seniority list is published, the Hon"ble High Court, Madras, should not proceed with selection of candidates for filling up vacancies to the post of Civil Judge (Senior Division) in the Pondicherry Judicial Service by promotion of Civil Judge (Junior Division) is basically incorrect and against factual truth. Rule 8 makes it clear that promotion of a Civil Judge (Junior Division) in the Pondicherry Judicial Service to the post of Civil Judge (Senior Division) shall be made only on the basis of merit-cum-seniority.

11.2. Hon"ble High Court, Madras, called for five copies of judgment rendered by this respondent during the period from year 2003 to 2007 by Official Memorandum in Roc. No. 48/2008-Con. B2, dated 30.10.2008. The Hon"ble High Court evaluated the judgments rendered by this respondent and took into consideration the work

turned out by this respondent during the preceding five years and also the gradation awarded to this respondent in the ACRs and Vigilance Report.

11.3. When promotion is based on merit-cum-seniority and subject to fulfillment of certain criteria as laid down in the Rules, the petitioner cannot claim promotion as a matter of right by virtue of a claim that he alone is the senior most. Seniority by itself is not the only qualification for promotion to the selection post. If the criterion for promotion is one of merit-cum-seniority, the comparative merit has to be assessed if the length of the service of the candidate being considered for promotion is equal and when an outstanding candidate among those being considered for promotion is available for promotion. Also, in the merit-cum-seniority, the seniority should have no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a junior most man may steal a march over his seniors and jump the queue for accelerated promotion. When the rules of promotion clearly provide that the promotion is based on merit-cum-seniority, a writ of mandamus cannot be issued to consider the petitioner for promotion.

12. First respondent has also filed a separate counter affidavit in W.P. No. 13629 of 2009, stating as under:

12.1. The writ petitioner has preferred the writ petition for re-fixation of her seniority over and above the respondents 3 to 5. The Hon'ble Promotion Committee, in the meeting held on 04.02.2009, considered the cases of seven Civil Judges on the basis of marks awarded on the Judgments, Annual Confidential Reports, Workdone and Leave availed and taking into consideration the Rules and the norms prescribed, the Committee evaluated the performance of the officers on the basis of merit-cum-seniority and suitability and recommended the following 4 officers for promotion to the cadre of Senior Civil Judges against the then existing vacancies of Senior Civil Judge:

1. Thiru G. Sendhilkumar
2. Ms. S. Mohana Kumari
3. Ms. V. Sofana Devi
4. Thiru Swarnam J. Natarajan

The Hon'ble Promotion Committee further recommended the names of the following two officers for promotion to the cadre of Senior Civil Judge to fill up the anticipated vacancies, if any:

1. Thiru S. Isvarane
2. Ms. G.T. Ambika

The Hon"ble Administrative Committee, in its meeting held on 18.04.2009, has approved the minutes/recommendations of the Hon"ble Selection Committee.

12.2. Thiru G. Sendilkumar and Ms. S. Mohanakumari were promoted as Senior Civil Judges vide High Court's Notification No. 165/2009, dated 07.09.2009, and Ms. V. Sofana Devi and Thiru Swarnam J. Natarajan were promoted as Senior Civil Judge vide High Court's Notification No. 195/2009, dated 22.10.2009. Since there were no vacancies to accommodate Thiru S. Isvarane and the writ petitioner namely G.T. Ambika, who were recommended for promotion in the anticipated vacancies, they had not been promoted on that occasion. Subsequently, in order to fill up two vacancies in the cadre of Senior Civil Judge, the Hon"ble Promotion Committee, consisting of three senior most Judges of the High Court then functioning, was pleased to recommend the names of Thiru S. Isvarane and Ms. G.T. Ambika, for promotion as Senior Civil Judge. Accordingly, they have been promoted as Senior Civil Judges in the year 2012.

12.3. In the above factual position, the claim of the writ petitioner for revision of her inter-se seniority could not be countenanced, as it would uncertain the settled things if the same is entertained. Hence, the Writ Petition may be dismissed.

13. Mr. K.M. Vijayan, learned Senior Counsel appearing for the petitioner in W.P. No. 9350 of 2009, would contend that the petitioner stood first in the written examination and also viva-voce, by securing highest marks amongst all the candidates, but, his seniority was fixed much below the candidates, who secured lower marks, thereby depriving him of seniority in promotion and, therefore, his seniority should be fixed atop among the candidates. He would also contend that just because the petitioner has secured highest marks in the examination, he cannot be punished by reduction of seniority, by bringing him from OBC Category into Unreserved Category. In support of his contentions, the learned Senior Counsel would rely upon the following decisions:

(1) [R.K. Sabharwal and others Vs. State of Punjab and others,](#)

"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 Castes 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 Castes. 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 up to 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 population. The numerical quota of posts is not a 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/promotes 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 shortfall nor excess in the percentage of reservation."

(2) [Bimlesh Tanwar Vs. State of Haryana and Others,](#)

"19. It was submitted that having regard to the instructions issued by the Haryana Government in its circular letter dated 27-4-1972, roster points cannot be considered as seniority points and further having regard to the fact that these instructions have been followed by the High Court for a long time, there is absolutely no reason as to why such a practice should be deviated from. The learned counsel contended that this Court in *Ajit Singh (II)*<sup>5</sup> having categorically held that roster points are not intended to determine seniority between general candidates and reserved candidates, the impugned judgment cannot be faulted with.

24. The Rules, therefore, indisputably lay emphasis on merit. It for all intent and purport excludes the applicability of rule of appointment in terms of roster points.

33. The question as to whether the determination of inter se seniority would depend upon the filling up of the vacancies so far as the reserved categories are concerned, having regard to the roster points, in our opinion, is no longer res integra.

40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of a 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."

(3) [G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others,](#)

"16. A grievance was made that the petitioners have moved this Court after a long unexplained delay and the Court should not grant any relief to them. It was pointed out that the provisional seniority list was drawn up on March 22, 1971 and the petitions have been filed in the year 1983. The respondents therefore submitted that the Court should throw out the petitions on the ground of delay, laches and acquiescence. It was said that promotions granted on the basis of impugned seniority list were not questioned by the petitioners and they have acquiesced into it. We are not disposed to accede to this request because Respondents 1 to 3 have not finalised the seniority list for a period of more than 12 years and are operating the same for further promotion to the utter disadvantage of the petitioners. Petitioners went on making representations after representations which did not yield any response, reply or relief. Coupled with this is the fact that the petitioners belong to the lower echelons of service and it is not difficult to visualise that they may find it extremely difficult to rush to the court. Therefore, the contention must be rejected.

17. In view of the discussion, these petitions succeed and are allowed and a writ in the nature of certiorari is issued quashing the impugned seniority list dated March 22, 1971 in respect of Khandsari Inspectors. The Respondents 1 to 3 are directed to draw up a fresh seniority list based on the principle of length of continuous officiation reckoned from the date of first appointment if the appointment is followed by confirmation i.e. selection/approval by the State Public Service Commission. We order accordingly, but in the circumstances of the case, there will be no order as to costs."

(4) [Kuldip Chand Vs. Union of India and others,](#)

"4. It is next contended by Mr. M.M. Kashyap, learned counsel for the appellant, that Ashok Kumar disputed the correctness of the seniority list made on 23-12-1982 in his representations dated 10-1-1983 and 1-8-1983 which were duly considered and rejected. He allowed it to become final as he did not challenge the same till post of

accountant became vacant. When it was rejected, he filed the writ petition in the High Court. There is a considerable delay in claiming his seniority over the appellant. It is true that the seniority list was prepared as early as on 23-12-1982 but no vacancy had arisen thereafter and, therefore, the mere rejection of the claim for seniority does not disentitle him to claim his seniority over the appellant for consideration by the respondent-Union.

5. When the aforesaid facts are taken into consideration, it would be obvious that the preparation of seniority list per se was illegal. Therefore, the mere fact that he did not challenge the seniority list, which was illegally prepared, till he was aggrieved for non-consideration of the claim to the post of accountant, his legitimate right to be considered cannot be denied. Under these circumstances, the delay is of no consequence for considering the claims of Ashok Kumar for the post of accountant."

(5) [S. Valluvan Vs. Tamil Nadu Civil Supplies Corporation and S. Purushothaman,](#)

"8. Delay and Laches:

8.1. The judgments relied upon by the learned Senior Counsel appearing for the appellant on the question of delay are not helpful to substantiate his case. As rightly held by the learned single Judge, the power under Article 226 of the Constitution of India is both discretionary and extraordinary in nature. Such a power cannot be equated with the power of the employer to the undo a wrong committed by it. Further more, it is the appellant, who has filed the writ petitions and not the second respondent. The delay and laches are one of practice and not law. An illegality cannot be sustained on the sole ground of laches alone when the facts and circumstances of the case warrant an interference. In this connection, the following passage of the pronouncement of the Honourable Apex Court in [Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others,](#) is apposite.

"54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a

manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

8.2. When substantial justice and technical considerations are pitted against each other, that the former is to be preferred and the later cannot claim to have a vested right based on delay. Considering the said issue, it has been held in [M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others,](#), which reads thus:

"13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for.

(emphasis supplied)

8.3. In [Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others,](#), the Apex Court overruled the objection of delay in filing of a petition involving challenge to the seniority list of mamlatdars and observed as follows:

"10.... Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a

sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like".

The abovesaid pronouncement of law has also been quoted with approval by the Honourable Apex Court in [Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others,](#) .

8.4. In [Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others,](#) , it has been observed by the Honourable Apex Court in the following manner on the question of delay.

"13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable (vide P. Sadasivaswamy v. State of T.N., State of M.P., V. Nandlal Jaiswal and Tridip Kumar Dingal V. State of W.B.)

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The Court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad V. Rohtas Light Railway C. Ltd., V. District Board, Bhojpur, Dayal Singh V. Unio of India and Shankara Co-op. Housing Society Ltd. V.M. Prabhakar.)

15. In H.D. Vora V. State of Maharashtra this Court condoned a 30 year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed."

"61. Before parting with the case, we are compelled to reiterate the oft stated principle that the State is a model employer and it is required to act fairly giving due

regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept."

(6) [Pondicherry Bar Association Vs. Union of India and Others](#), :

"10. As is clear from Articles 233 and 234 of the Constitution of India, there is no place for the executives to come in, in the matters relating to appointment of persons to be, and the posting and promotion of, District Judges in any State, and such appointment, promotions and postings are to be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. Even in the matter of recruitment of persons other than District Judges to the Judicial Service of a State, shall be made by the Governor of the State in accordance with the rules made by him after consultation with the State Public Service Commission and with the High Court concerned. Here again no provision is made in the, Constitution of India for inclusion of any Executive in the Committee for selection of persons for such posts.

11. Having regard to the scheme of the Constitution relating to recruitment of persons in the subordinate judiciary of a State, and to maintain independence of judiciary, it is not permissible to include either the Chief Secretary or the Law Secretary, or both, in the Selection Committees, as is sought to be done in the impugned rules. In this view of the matter, we have no reservation or hesitation to hold that inclusion of the Chief Secretary to the Government of Pondicherry and the Secretary (Law), Government of Pondicherry as members of the Selection Committee, either in clause 1(b) or in clause 4(b) of the Annexure to the Rules are clearly, ultra-vires of the Constitution of India, and as such they cannot be sustained."

14. Mr. Vijay Narayan, learned Senior Counsel appearing for the petitioner in W.P. No. 13629 of 2009, would argue that the petitioner has secured third rank in the examination and just because she belongs to Unreserved category, her seniority cannot be put far behind the reserved candidates, who secured lower marks. The learned Senior Counsel would further contend that the seniority of the petitioner should be reckoned based on merit, but not on roster, and, therefore, her seniority has to be restored.

15. Mr. R. Thiyagarajan, learned Senior Counsel for the impleaded fifth respondent in W.P. No. 9350 of 2009, would contend that the said respondent stood second in merit, by securing higher marks in the examination in the Unreserved Category over and above respondents 3 and 4 and, therefore, his seniority has to be restored.

16. On the other hand, Mr. V. Ayyadurai, learned counsel for the first respondent, would contend that original seniority at entry level was maintained as per roster basis and seniority with regard to promotion has been determined by the Selection Committee on the basis of merit-cum-seniority from amongst the category of Civil Judge (Junior Division) on consideration of entries in Annual Confidential Reports,

inclusive of vigilance report; evaluation of the judgments rendered by the individual concerned and work done statement as per Rule 8(6) of the Puducherry Judicial Services (Cadre and Recruitment) Rules, 2008; the duly constituted Selection Committee considered seven eligible candidates including the writ petitioners as per the existing rules on the basis of merit-cum-seniority, suitability, service records and other records of each candidate, recommended drawal of panel for promotion to the post of Civil Judge (Senior Division) wherein third and fourth respondents were assigned ranking as Sl. Nos. 1 and 2 respectively; the Committee also recommended to keep the panel alive for a period of one year; the writ petitioner was assigned with ranking as Sl. No. 4 in the said panel; accordingly, the third and fourth respondents, who were ranked as one and two respectively, have been issued with promotion order, dated 05.05.2009, and, thereafter, the writ petitioners were also accommodated in the anticipated vacancies and, therefore, there is no illegality in the seniority fixed by the first respondent. The learned counsel would cite the following decisions:

(1) [High Court of Judicature at Patna Vs. Madan Mohan Prasad and Others,](#) :

"43. It is well settled that promotion is not a matter of right much less a fundamental right, more particularly when promotion in the subordinate judiciary is to be dealt with by the High Court which has complete control over the subordinate judiciary in view of Article 235 of the Constitution. All rights and claims of Respondent 1 got crystallised when this Court passed the order dated 25-11-1986 in SLP (C) No. 8621 of 1985 read with the order dated 30-8-1983 passed by this Court in SLP (C) No. 8923 of 1983. If Respondent 1 had any other claim he ought to have made the same before this Court when the above-numbered special leave petitions were disposed of. In fact both the special leave petitions were dismissed and therefore all his claims stood finally rejected, except the direction given to pay him the pension, etc. mentioned in the order dated 25-11-1986 passed in SLP (C) No. 8621 of 1985."

(2) [Union of India \(UOI\) and Others Vs. Dinesh Prasad,](#) :

"20. In our view, the learned Single Judge was clearly in error in allowing such argument. Firstly, the argument was raised without any foundation in the writ petition. No plea of actual or likelihood of bias was raised in the writ petition. There was also no plea taken in the writ petition that he was denied fair trial in the course of Summary Court Martial. Secondly, and more importantly, the learned Single Judge overlooked and ignored the statutory provisions referred to hereinabove. The Division Bench also failed in considering the matter in right perspective and in light of the provisions in the Army Act and the Army Rules."

3) [K. Samantaray Vs. National Insurance Co. Ltd.,](#) :

"7. The principles of seniority-cum-merit and merit-cum-seniority are conceptually different. For the former, greater emphasis is laid on seniority, though it is not the

determinative factor, while in the latter, merit is the determinative factor. In *State of Mysore v. Syed Mahmood* it was observed that in the background of Rule 4(3)(b) of the Mysore State Civil Services (General Recruitment) Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit; that the rule required promotion to be made by selection on the basis of "seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion". It was pointed out that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. But these are not the only modes for deciding whether promotion is to be granted or not.

9. As the figurative data extracted from the policy goes to show the service structure is like a pyramid. The higher one goes in the ladder of promotional posts, remarkably the seniority loses importance, and merit gets primacy.

10. In *Syndicate Bank* case observations in para 14 throw considerable light on the controversy. The third mode (apart from seniority-cum-merit and merit-cum-seniority modes) has been recognized. It has been described as a "hybrid mode of promotion". In other words, there is a third category of cases where seniority is duly respected and merit is appropriately recognized.

11. While laying down the promotion policy or rule, it is always open to the employer to specify the area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, nor has the effect of violating any statutory scope of interference and other relatable matters. The decision in *B.V. Sivaiah* case is clearly distinguishable on facts and in law. That was a case where statutory rules governed the field. This Court, inter alia, held that fixing terms which are at variance with the statutory rules is impermissible. In the case at hand, prior to the formulation of policy in February 1990, there were no codified prescriptions. It was the stand of the respondent employer that prior to the formulation of the policy, certain guidelines existed and the objectives of the policy were to rationalize and codify the existing guidelines relating to promotions within officers' cadre. There is no statutory rule operating. It is for the employer to stipulate the criteria for promotion, the same pertaining really to the area of policy-making. It was, therefore, permissible for the respondent to have their own criteria for adjudging claims on the principle of seniority-cum-merit giving primacy to merit as well, depending upon the class, category and nature of posts in the hierarchy of administration and the requirements of efficiency for such posts."

(4) [N.C. Das Vs. Gauhati High Court thr. Registrar and Others,](#)

"7. Rule 7(1) of the 1974 Rules provides for qualifications for recruitment to the service in Grade I and Grade II. According to this Rule,

"Qualifications for recruitment to the service in Grade I and Grade II--(1) Appointment to the post of Grade I and Grade II by promotion from the next grade below shall be made on the ground of merit-cum-seniority."

In the petitioner's ACR of the year 2000, it has been recorded that he was not yet fit for promotion. Similar remarks have been recorded in 2001 and 2002 ACRs. Thus, in last three years immediately preceding the date of consideration of the petitioner's case for promotion, his ACRs show that he was not found fit for promotion. Based on the remarks in the ACRs of the years 2000, 2001 and 2002 if the petitioner has been denied promotion in July 2003, such action can hardly be faulted.

8. The remarks in ACRs do enable the authority to assess the comparative merit once the question of promotion arises when the criterion for promotion is merit-cum-seniority. It is pertinent to notice that the adverse remarks in the ACRs of 2000 and 2001 were communicated to the petitioner on 28-11-2002 and the adverse remarks for the year 2002 were communicated to him on 19-5-2003. The adverse remarks were thus communicated to the petitioner before 29-7-2003 and these remarks continued to remain on record though the petitioner had submitted his representation/reply thereto. Be that as it may, in view of the petitioner's service record of the years 2000, 2001 and 2002, it cannot be said that he has been wrongly denied promotion to Grade I."

(5) [M. Kulam Mohamed Vs. The General Manager, Southern Railway, Union of India \(UOI\) and The Registrar, Central Administrative Tribunal,](#)

"13. From the above decision of the Apex Court it is clear that where the validity of an order passed under Clause (c) of second proviso to Article 311(2) of the Constitution, is assailed before a Court or Tribunal, it is open to the Court or the Tribunal to examine whether the satisfaction of the President or the Governor is (a) vitiated by mala fides and (b) based on wholly extraneous or irrelevant grounds. It is also clear that in order to ascertain, the Government is obliged to place before the Court or Tribunal the relevant material on the basis of which the satisfaction was arrived at. It is also clear that in order to withhold production of particular document or record, the Department is free to claim privilege under Sections 123 and 124 of Evidence Act. However, in such case, where privilege is claimed, it is the duty of the Government to disclose before the Court or Tribunal the nature of the activities which the Government employee is said to have indulged in."

(6) [The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari,](#)

"6. The principle of merit-cum-seniority is an approved method of selection and this Court in Sant Ram Sharma v. State of Rajasthan held that promotion to "selection grade posts" is not automatic on the basis of ranking in the gradation list and the promotion is primarily based on merit and not on seniority alone. At p.1914 of the judgment, it is stated as under: (AIR para 6)

"The circumstance that these posts are classed as "selection grade posts" itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the gradation list but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the gradation list does not confer any right on the petitioner to be promoted to selection post and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available."

7. The Court further held that such mode of selection is not violative of Article 14 of the Constitution.

8. In *State of Orissa v. Durga Charan Das* the Constitution Bench of this Court held that the promotion to a selection post is not a matter of right which can be claimed merely by seniority.

9. In *Union of India v. Mohan Lal Capoor* (SCC at p.856, para 37) it was held as under:

"[F]or inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or, if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale."

10. In *B.V. Sivaiah v. K. Addanki Babu* this Court held that the principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal."

(7) [Sant Ram Sharma Vs. State of Rajasthan and Another,](#)

"6..... In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection posts and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is therefore available. The administrative practice with regard to selection posts is laid down in a letter of the Government of India dated July 31, August 3, 1954 as follows:

"If a person, though senior in the gradation list, is appointed to the selection post later than his junior, this is presumably because he is superseded as a matter of

selection. If this is so, it would certainly not be unjustified to regard the officer so selected earlier, though junior in the gradation list, as senior to the other officer, as far as the selection posts are concerned".

9..... If the State of Rajasthan had considered the case of the petitioner alongwith the other eligible candidates before appointments to the selection posts there would be no breach of the provisions of Articles 14 and 16 of the Constitution because everyone who was eligible in view of the conditions of service and was entitled to consideration was actually considered before promotion to those selection posts was actually made.

"The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organisation. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment..... Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular grade is best suited for promotion to a higher grade; the very opposite may be true."

17. We have heard the learned Senior Counsel and the other counsel appearing for the parties and also perused the records.

18. In order to decide these Writ Petitions, the relevant provisions that are necessary for consideration are: Articles 16, 231, 233, 234, 235, 239 and 309 of the Constitution of India and also Rules 7, 9, 25, 26 of the Rules, 1996, and also Rules 8 and 15(4) of the Rules, 2008. The said provisions read as under:

11.1. Article 16:

"16. Equality of opportunity in matters of public employment.--(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

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

(4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

#### 11.2. Article 231:

"231. Establishment of a common High Court for two or more States.--(1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory."

#### 11.3. Article 233:

"233. Appointment of district judges.--(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

11.4. Article 234:

"234. Recruitment of persons other than district judges to the judicial service.--Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."

11.5. Article 235:

"235. Control over subordinate courts.--The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

11.6. Article 239:

"239. Administration of Union territories.--(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify."

11.7. Article 309:

"309. Recruitment and conditions of service of persons serving the Union or a State.--Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

19. Article 16 contemplates equality of opportunity in matters of public employment to any office under the State. However, under clause 4, nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State and under clause 4-A, the State shall make any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. Clause 4-B shall also permit the State to consider any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause 4 or clause 4-A as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

20. Article 231 in Chapter V, which deals with establishment of a common High Court for two or more States, provides under clause (1) that notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

21. Article 233 under Chapter VI contains the provision for appointment of District Judges. Under Clause (1), Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State, in consultation with the High Court exercising jurisdiction in relation to such State. Under Clause (2), a person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

22. Article 234 envisages the recruitment of persons other than district judges to the judicial service. This Article states that appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

23. Article 235 defines control over subordinate courts, as per which, the control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but, in this article, nothing is taken away from any such person any right of appeal which he may have under the law regulating the conditions of his

service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

24. Article 239 provides for administration of Union territories. Under this Article, save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

25. Article 309 denotes the recruitment and conditions of service of persons serving the Union or a State. As per this Article, subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State, provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

26. In exercise of the powers conferred by the proviso to Article 309, read with the Government of India, Ministry of Law, Justice and Company Affairs (Department of Justice), in its notification, dated 31st August, 1979, and all other powers enabling him in this behalf, the Lieutenant Governor, Pondicherry, in consultation with the High Court of Madras, was pleased to make the rules, namely, Pondicherry Judicial Service (Cadre and Recruitment) Rules, 1996, and the said rules came into force with effect from 21st March, 1996.

27. Rule 7 of the Rules deals with recruitment of Civil Judges. The said Rule reads as under:

"(1) The recruitment of personnel in the Civil Judge (Junior Division)/Judicial Magistrate First Class, and the appointment by transfer on deputation or direct recruitment, if any, in the cadre of District Judge, shall be made by the Administrator in consultation with the High Court.

(2) The promotion from one cadre to another cadre shall be made by the Administrator in accordance with the recommendation of the High Court.

(3) If no suitable candidate is available for promotion to the posts vacant in cadre (1) those posts shall be filled up by transfer on deputation of Judicial Officers holding analogous posts in the State of Tamil Nadu, failing which, through direct recruitment.

(4) The transfer and post of all Judicial Officers shall be made by the High Court."

28. Rule 9 defines Method of recruitment. Under this Rule,

"(a) District Judge-

(i) by promotion on the basis of seniority-cum-merit from the cadre of Civil Judge (Senior Division):

Provided that such number of posts as may be determined by the High Court from time to time, but not exceeding in the aggregate 33 1/3% of the posts in the cadre of District Judge may be filled by direct recruitment; and

(ii) by direct recruitment from the Bar on the basis of viva voce examination conducted by the High Court as specified in the Annexure.

(b) Civil Judge (Senior Division)/Chief Judicial Magistrate.-By promotion from the cadre of Civil Judge (Junior Division)/Judicial Magistrate First Class on the basis of seniority-cum-merit."

29. Rule 25 provides for regulations. The said provision is as under:

"Rule 25: Regulations.-The Administrator may in consultation with the High Court make regulations not inconsistent with these rules to provide for all matters for which provisions are necessary or expedient for the purpose of giving effect to these rules."

30. Rule 26 denotes the application of other rules, which is as follows:

"Rule 26: Application of other rules.-All rules regulating the conditions of service of the members of the Central Civil Services made from time to time under any law or the proviso to article 309 of the Constitution of India shall, subject to article 233, 234, 235, be applicable to the members of Pondicherry Judicial Service."

## SCHEDULE

(See Rule 4)

The authorised permanent strength of the service and the nature of posts included in it are as follows:

Civil Judge (Junior Division)/Judicial Magistrate First Class.... 10

Civil Judge (Senior Division)/Chief Judicial Magistrate... 5

District Judge/Additional District Judge/Sessions Judge/Additional Sessions Judge... 4"

31. Pursuant to the above Rules, in exercise of the powers conferred by the proviso to Article 309 of the Constitution, read with the Government of India, Ministry of Law, Justice and Company Affairs (Department of Justice) Notification No. 30/16/76/Jus., dated 31st August 1979, and all other powers enabling him in this behalf, the Administrator, Puducherry, in consultation with the High Court, Madras,

made the following rules, namely, Puducherry Judicial Service (Cadre and Recruitment) Rules, 2008.

32. Rule 8 of the said rules is as under:

"Rule 8: Method of appointment, qualification and age.-

33. Rule 15(4) is as under:

"Rule 15. Seniority.-(1) xxxx

(2) xxxx

(3) xxxx

(4) The seniority of a person appointed to the category of Civil Judge (Junior Division) shall be determined by the rank assigned to him/her in the list drawn by the High Court."

SCHEDULE

(See Rule 4)

The authorised permanent strength of the service and the nature of posts included in it are as follows:

Civil Judge (Junior Division)... 8

Civil Judge (Senior Division)/Chief Judicial Magistrate... 6

District Judge-cum-Sessions Judge... 4"

34. Following the above rules, the High Court of Judicature at Madras issued a Notification No. 87/2001, dated 06.08.2001, calling for applications for appointment against six vacancies of Civil Judge (Junior Division), including two anticipated vacancies.

35. The above provisions make it clear as to what is constitutionally mandated for the recruitment of a person to the judicial service of the Government of Pondicherry and also the control over the subordinate courts by the High Court and the rules made thereunder, subject to the provisions of Article 309 of the Constitution. The rules contemplated the mode of recruitment, the method under which and how the process is to be made and also the list to be drawn as regards seniority.

36. In the instant case, it is seen that the process commenced on 06.08.2001; appointment was made on 09.12.2002 and the order was issued thereafter on 27.01.2003. Therefore, it could be clear that the recruitment was done, applying 1996 Rules.

37. The impugned Official Memorandum issued by the High Court of Madras, dated 05.05.2009, vide reference under High Court's Notification No. 71/09, dated 30.04.2009, indicates that the promotee Civil Judges mentioned in Column (1) are informed that they are ordered to be posted to the posts mentioned against their names in Column (2) and, according to the petitioners, from that only, they came to know of their positions and that there was no communication indicating as to how they are placed in the seniority.

38. Mr. T. Murugesan, learned Government Pleader appearing for the State of Puducherry, would inform that there was an appointment order based on the selection list and the position of the petitioners was informed to them and, having knowledge about the seniority, the petitioners had not raised the issue of seniority after joining the service in the year 2003, and that having kept quiet for about eight years and no cause of action, without explaining the delay, they are estopped from approaching this Court, questioning the seniority already fixed, and asking for refixation of the same.

39. True it is, the Government of Puducherry, in consultation with the High Court of Madras, would make every effort to determine the position of seniority after the selection of candidates and the appointments are made. However, it is the duty of the State Government to spell out the correct position of the members of the service, who are under its control, and, particularly, the Judicial Service. The internal communication, which has been revealed and communicated to the High Court by the Government, has simply stated that as per the roster, 3 OBC candidates at the top, and 3 Unreserved candidates at the bottom of the list and altogether six candidates have been given the position of the roster status.

40. In this context, it is very much necessary to refer to the rule position as regards the application of roster. Admittedly, the Puducherry Judicial Service comes under the purview of the Central Government Rules. Earlier it was 40 point roster; thereafter, it has been changed to 200 point roster and 100 point roster and promotion to 40 point roster. Now, the Central Government has issued an Official Memorandum after the Supreme Court ruling in the case of R.K. Sabharwal, cited above, indicating how horizontal and vertical reservation has to be followed in the recruitment process and how the seniority position has to be fixed. The rules governing the Central Government Staff in matters of recruitment and promotion are as follows:

"I. DIRECT RECRUITMENT ON ALL INDIA BASIS

(A) BY OPEN COMPETITION

Model Roster for cadre strength up to 13 posts

(B) OTHERWISE THROUGH OPEN COMPETITION

Model Roster for cadre strength up to 13 posts

## II. PROMOTION

### Model Roster for cadre strength up to 13 posts

NOTES:- (Common to both Direct Recruitment and Promotion)

1. For cadres of 2 to 13 posts, the roster is to be read from entry 1 under Column Cadre Strength till the last post and then horizontally till the last entry in the horizontal row, i.e., like "L".

2. All the posts of a cadre are to be earmarked for the categories shown under Column Initial Appointment. While initial filling up will be by the earmarked category, the replacement against any of the post in the cadre shall be by rotation as shown horizontally against the last post of the cadre.

3. The relevant rotation by the indicated reserved category could be skipped over if it leads to more than 50% representation of reserved category.-OM, dated 2-7-1997. (Order No. 1)"

41. The post based reservation roster, as fixed by the Government of India in OM, dated 02.07.1997, would clearly indicate how the roster has to be operated for direct recruitment on all India basis by open competition and also how the horizontal and vertical reservation has to be applied on the roster aspect. Similarly, otherwise through open competition and promotional roster are also explained in the Notification.

42. The paramount consideration of the State authorities in consultation with the High Court of Madras as to the application of roster in the recruitment process and also promotions has been clearly explained in the above tables. The High Court of Judicature at Madras applied different rosters for the subordinate officers of the State of Tamil Nadu under Judicial control. As far as the Union Territory of Puducherry is concerned, it could only be the central roster, that has to be applied. That being the position, it is imperative on the part of the Union Territory of Puducherry to give the correct position of the roster to the High Court of Judicature at Madras to apply the same for recruitment and promotions, as per rules.

43. In the case on hand, on verification of the records, it has been vivid that no such procedure in applying the roster has been followed by the Union Territory of Puducherry so as to implement the correct position of the roster points in accordance with law, which lapse had resulted in anomaly in fixation of seniority and, hence, the petitioners are before this Court, seeking to set right the same.

44. In matters of determination of seniority, delay also is a factor, to be reckoned with. Normally, settled seniority cannot be resettled after a long lapse of time. In the present case, the point raised by the respondents with regard to seniority is that after a lapse of eight years, the petitioners have approached this Court and hence the said approach cannot be appreciated. Be that as it may. Equally important, respondents 1 and 2 have also a duty to give the correct position to their employees

as to how they are placed in their seniority position. No communication has been made in this regard and, therefore, the petitioners claim that despite several representations, no reply emanated from the respondents.

45. One important provision to be noted in this regard is Article 16(1) of the Constitution of India, which provides for equality of opportunity in matters of public employment. The word "employment" includes recruitment, training, appointment, promotion and seniority. Also, the words "employment or appointment" are wide enough to include tenure, duration, emoluments and duties and obligations, whether the employment is temporary or permanent. They cover amongst themselves not merely the initial appointment, but also salary, increments, revision of pay, promotion, gratuity, leave, pension and age of superannuation.

46. The above being the legal position, the legal right conferred on the petitioners as to the seniority, in the considered opinion of this Court, has to be extended in accordance with law. By the denial of the said right, the petitioners are not only deprived of their fundamental rights, but are put to much prejudice as well. Judiciary, being the guardian of justice, ought to have been kept informed of the correct roster position by the State Government and failure to do so in this case has resulted in inaction on its part.

47. On analysing each and every factor involved in this case and looking into the claims made by the petitioners, we are satisfied that the delay could not be put against the interests of the petitioners and their rights have to be protected in the manner as contemplated under the rules.

48. We, at this stage, shall consider the role of High Court in the matter of State Judicial Services.

49. The Indian Constitution provides for an independent judiciary in every State by making a provision for a High Court being constituted for each State. The Constitution has conferred very wide powers and extensive jurisdiction on each High Court, including the power of superintendence over all the courts and tribunals in the territory over which it has jurisdiction. Undoubtedly, one of the most important wings of the judiciary comprises of the subordinate courts as it is in these courts that the judiciary comes in close contact with the people. In order to secure the independence of the subordinate judiciary from the executive, Articles 233 to 237 have been placed in the Constitution. Article 233 deals with the appointment of District Judges and provides that appointments, postings and promotions of District Judges in any State shall be made by the Governor in consultation with the High Court, exercising jurisdiction in relation to such State. The words "District Judge" has been defined in Article 236(a) as under:

"236. (a) the expression "District Judge" includes Judge of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Cause Court, Chief Presidency Magistrate, Additional Chief Presidency

Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge."

50. The expression "Judicial Service" has been defined in clause (b) of Article 236 which is extracted below:

"236. (b) the expression "Judicial Service" means a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge."

51. Article 237 gives power to the Governor to apply, by public notification, the provisions of this Chapter and the Rules made thereunder to any class or classes of Magistrates. Once such a notification is issued, the provisions of Articles 234, 235 and 236 will become applicable to those Magistrates and they would become members of the "Judicial Service" under the control of the High Court.

52. In order to ensure their independence, the control over the subordinate courts has been vested in the High Court under Article 235. Under this article, the High Court's control over the subordinate judiciary is comprehensive and extends over a variety of matters, including posting, promotion and grant of leave. The three words, namely, "posting", "promotion" and "grant of leave" used in this Article are only illustrative in character and do not limit the extent of control exercised by the High Court over the officers of the subordinate judiciary. The expression "control" in Article 235 includes disciplinary control.

53. From the scheme of the Constitution, as set out above, it will be seen that though the officers of the subordinate judiciary are basically and essentially government servants, their whole service is placed under the control of the High Court and the Governor cannot make any appointment or take any disciplinary action including action for removal or compulsory retirement unless the High Court is consulted as required by the constitutional impact of both the Articles 233 and 234 and the "control" of the High Court indicated in Article 235.

54. The word "consult" in its ordinary meaning means "to ask advice" or "to take counsel". The Governor is thus a "consultor" and the High Court is the "consultee" which is treated as an expert body in all matters of service including appointments, disciplinary action, compulsory retirement etc. relating to State Judicial Services. Since the Governor cannot act on his own unless he has consulted the High Court, the Constitution has conferred upon the High Court a sacred and noble duty to give the best of advice or opinion to the Governor; an advice tendered after due deliberation and after taking into consideration all the relevant material and record relating to the problem on which consultation is made or advice is sought by the Governor. It is, therefore, essentially a matter of trust and confidence between the Governor and the High Court. The High Court cannot act arbitrarily in giving its opinion to the Governor or else it will be a betrayal of that trust. If the advice is not supportable by any material on record and is arbitrary in character, it will not have any binding value.

55. Under the Indian Constitution, the High Court is vested with the entire administration of the subordinate judiciary under Articles 233, 234 and 235 of the Constitution of India. The High Court is vested with the power to see that the high traditions and standards of the judiciary are maintained by the selection of proper persons to man the subordinate judiciary. Requirements for the appointment of a judicial officer, under Article 234 of the Constitution and the Judicial Service Rules:

56. In these petitions, we are concerned with the question as to whether the first respondent (High Court of Judicature at Madras) and the second respondent (Government of Puducherry) have proceeded correctly in the matter of appointment of Civil Judges. In this behalf we must refer to Article 234 of the Constitution, which is the governing Article, when it comes to the recruitment of persons other than District Judges to the judicial service. This Article reads as extracted supra.

57. In the instant case, appointments to the posts of Civil Judges are governed by the Pondicherry Judicial Service (Cadre and Recruitment) Rules, 1996, framed under Articles 233, 234, 235, 237 proviso to Article 309 and proviso to Article 320(3) of the Constitution. Para 8 of the Annexure to the said Rules provides that a list of suitable candidates shall be prepared in the order of merit on the basis of aggregate of marks secured in the competitive examination including viva-voce. In the High Court's notification calling for application also, it has been clearly stated in para 8(a) relating to "Procedure of Selection" that the selection will be made based on the result of the written examination and viva-voce examination i.e., the selection will be made on the basis of the total marks obtained by the candidates. Accordingly, an advertisement was issued and written and oral tests were conducted. The petitioners appeared for the same and secured higher marks in the competition than those of respondents 3 and 4.

58. Article 234 specifically requires that these appointments are to be made after consultation with the State Public Service Commission and the High Court exercising jurisdiction in the State concerned. Inasmuch as the selection is for the appointment to a judicial post, the Governor will have to be guided by the opinion of the High Court. In the present case, as is seen from the foregoing paragraphs, though the Government had sought for the opinion of the High Court as regards the list of meritorious candidates for appointment, the order of meritorious candidates was misquoted by the first respondent. When the Government had sought for the opinion of the High Court, it was the duty of the High Court under Article 234 to give a true picture as regards the merit of the selected candidates. Such communication is necessary following the meaningful consultation as contemplated under this Article.

59. In this connection, it is very relevant to mention the proceedings of the second respondent/Union Territory of Puducherry, dated 11.07.2001, addressed to the first respondent/Registrar General of High Court of Madras. The said proceedings read as under:

"GOVERNMENT OF PONDICHERRY  
LAW DEPARTMENT

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D.O. No. A. 21016/1/2001-LD

Pondicherry, the dt. 11.07.2001

Sub: Pondicherry Judicial Service-Direct Recruitment to the post of Civil Judge (Junior Division)/Judicial Magistrate First Class-Roster Points-Regarding.

Ref: D.O. Letter No. 82/99-CON. B1 dated 6.7.2001 of the High Court, Madras.

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I am to refer to your letter cited on the above subject and to inform that the Pondicherry Judicial Service is presently having the cadre strength of 9 in the cadre of Civil Judge (Junior Division)/Judicial Magistrate First Class. Out of the said cadre strength, 5 Judicial Officers are already in position and there are 4 physical vacancies presently in the said cadre. In view of the recent promotion of Tvl. G. Patric and G. Rajasuria, as District Judges, 2 more resultant vacancies are likely to arise in the cadre of Civil Judge (Junior Division).

2. It is informed that if the High Court desires to full up the 4 physical vacancies and also the 2 anticipated vacancies (totally six vacancies) in this recruitment year itself (2001), the roster points concerned shall be as follows:

1. OBC
2. OBC
3. OBC
4. UR
5. UR
6. UR

3. On the other hand, if it is proposed to fill up only the 4 physical vacancies in this year, the roster points shall have to be taken as follows:

1. OBC
2. OBC
3. UR
4. UR

This is because of the requirement that at a particular recruitment year, reservation should not exceed 50% of the vacancies.

4. I am therefore to request that the High Court may kindly be moved for taking appropriate action, after taking into consideration the aforesaid particulars in regard to the roster points while filling up the vacancies in the posts of Civil Judge (Junior Division)/Judicial Magistrate First Class by way of direct recruitment. With regards

Yours sincerely,  
(JOHN CLAUDE POMPEI MARIADASSOU)  
DEPUTY SECRETARY TO GOVERNMENT

To  
The Registrar General,  
High Court,  
Madras."

60. At the same time, it is also relevant to refer to the proceedings of the second respondent/Union Territory of Puducherry, dated 24.10.2002, addressed to the first respondent/Registrar General of High Court of Madras. The said proceedings read as under:

"GOVERNMENT OF PONDICHERRY  
LAW DEPARTMENT

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No. A. 21016/1/2002-LD

Dated. 24.10.2002

Sub: Pondicherry Judicial Service-Filling up of the post of Civil Judge (Junior Division)/JMFC by Direct Recruitment-Clarification-Reg.

Ref: 1. D.O. Letter No. 82/99-CON. B1 dated 10.10.02 of the Registrar General, High Court, Madras.

2. D.O. Letter No. 82/99-CON. B1 dated 17.10.02 of the Registrar General, High Court, Madras.

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I am directed to refer to your letter first cited communicating a list of six candidates selected for appointment to the posts of Civil Judge (Junior Division)/Judicial Magistrate First Class in the Pondicherry Judicial Service by Direct Recruitment and to state that in as much as presently there are only four physical vacancies in the said cadre in the Pondicherry Judicial Service, offer of appointment could be given only to 4 candidates in the order of merit.

2. In the above context, I am to refer to your letter second cited and to inform that the merit list of the selected candidates has been communicated therein as follows:

1. Thiru G. Sendil Kumar-OBC
2. Selvi S. Mohana Kumari-OBC
3. Selvi V. Sofana Devi-OBC
4. Thiru Swarnam J. Natarajan-UR
5. Thiru S. Isvarane-UR
6. Tmt. G. Thirupurambikai-UR

3. However, taking into consideration the marks obtained by the candidates in the written examination and also in the viva-voce examination as communicated in ROC No. 82/99/CON/B1 dt. 10.10.12 (Notice), the order of merit works out to be as follows:

1. Thiru Swarnam J. Natarajan
2. Thiru S. Isvarane
3. Tmt. G. Thirupurambikai
4. Thiru R. Venkata Subramanian
5. Thiru G. Sendil Kumar
6. Selvi V. Sofana Devi

Selvi S. Mohana Kumari Both securing same marks

4. I am to state in this connection that the rosters are intended to be an aid at determining the number of vacancies to be reserved and are not meant to be used for determining the order of appointment or seniority. The relative seniority of all direct recruits will have to be determined by the order of merit in which they are selected for such appointment on the recommendations of the selection committee. The Pondicherry Judicial Service (Cadre and Recruitment) Rules, 1996 in para 8 of the Annexure to the said Rules provides that a list of suitable candidates shall be prepared in the order of merit on the basis of aggregate of marks secured in the competitive examination including viva-voce. In fact, in the High Court's notification calling for application, it has been clearly stated in para 8(a) relating to "Procedure of Selection" that the selection will be made based on the result of the written examination and viva-voce examination i.e., the selection will be made on the basis of the total marks obtained by the candidates.

5. In the above circumstances, I am directed to request you to kindly clarify the matter in regard to the merit list, so that offer of appointment may be issued to the first four candidates.

Yours faithfully  
(JOHN CLAUDE POMPEI MARIADASSOU)  
DEPUTY SECRETARY TO GOVERNMENT"

61. Pursuant to the above proceedings of the Union Territory of Pondicherry/second respondent, the High Court of Judicature at Madras/first respondent, vide its proceedings D.O. Letter No. 82/99-Con. B1, Dt. 28.10.2002, had clarified the position. The said proceedings read as follows:

K. JAYARAMAN, B.Sc., B.L.,  
REGISTRAR GENERAL

HIGH COURT  
MADRAS.

D.O. Letter No. 82/99-Con. B1, Dt. 28.10.2002

Dear Sir,

Sub: Pondicherry Judicial Service-filling up of the Post of Civil Judges (Junior Division)/J.M.F.C. by direct recruitment-list of provisionally selected candidates-forwarded-Orders of appointment-requested-clarification-sought for-furnished-Reg. Ref: 1) High Court's D.O. Letter No. 82/99-Con. B1, dated 10.10.2002 and 17.10.2002.

2) Letter No. A. 21026/1/2002-LD, dated 24.10.2002 from the Deputy Secretary to Government, Law Department, Government of Pondicherry, Pondicherry.

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I am to invite a reference to High Court's letters first cited and the Government's letter second cited.

With regard to clarification as sought for in the Government's letter second cited, I am directed to state that according to the roster, the arrangement of the candidates, rank wise, is proper.

I am, therefore, to request that necessary orders of the Government in the matter may be obtained and communicated early.

Yours faithfully,  
Registrar General.

To  
Thiru John Claude Pompei Mariadassou,  
Deputy Secretary to Government,  
Law Department,  
Government of Pondicherry,  
PONDICHERRY."

62. From all the above proceedings, what could be stated is that though the second respondent/Government of Puducherry had made it clear to the first respondent, stating, that rosters are intended to be an aid at determining the number of vacancies to be reserved and not meant to be used for determining the order of appointment or seniority; that the relative seniority of all direct recruits will have to be determined by the order of merit in which they are selected for such appointment on the recommendations of the selection committee; that the Pondicherry Judicial Service (Cadre and Recruitment) Rules, 1996 in para 8 of the Annexure to the said Rules provide that a list of suitable candidates shall be prepared in the order of merit on the basis of aggregate of marks secured in the competitive examination including viva-voce; that in the High Court's notification calling for applications, it has been clearly stated in para 8(a) relating to "Procedure of Selection" that the selection will be made based on the result of the written examination and viva-voce examination i.e., the selection will be made on the basis of the total marks obtained by the candidates; and sought clarification from the High Court of Judicature at Madras/first respondent in the matter with regard to the merit list in order to issue offer of appointment to the candidates, it is unfortunate, the first respondent clarified the matter, stating that according to the roster, the arrangement of the candidates, rank wise, was proper, and that necessary orders of the Government in the matter may be obtained and communicated early. The said clarification of the first respondent, in our considered opinion, was in utter disregard of the Rules and the Notification, calling for applications for recruitment of the posts of Civil Judge (Junior Division)/Judicial Magistrate First Class, by direct recruitment, and also without application of mind.

63. When the Constitution of India mandates and confers certain rights and the rules prescribe as to the method so also the executive orders direct and clarify the procedure to be adopted in fixing the roster and merit, it is more important that the two organs of democracy, namely, Executive and Judiciary, while dealing with the matters of appointment and promotion, shall follow the rule of law in strict sense without any abridgement or violations thereof. Though, in this case, the mistake was initially committed by the State of Puducherry as to the application of roster for appointment, the Judiciary had not looked into the matter as contemplated by the rules, and, thereafter, issued incorrect clarification to the State as to the merit and seniority of the candidates for issuing orders of appointment.

64. We wonder, how, when the rules emphasise that rosters are only intended for determining the number of vacancies to be reserved and not meant for determining the order of appointment or seniority; the relative seniority of all direct recruits has to be determined by the order of merit in which they are selected for such appointment on the recommendations of the Selection Committee; the Pondicherry Judicial Service (Cadre and Recruitment) Rules, 1996 in para 8 of the Annexure to the said Rules provide that a list of suitable candidates shall be prepared in the order of merit on the basis of aggregate of marks secured in the competitive examination

including viva-voce; that in the High Court's notification calling for applications, it has been clearly stated in para 8(a) relating to "Procedure of Selection" that the selection will be made based on the result of the written examination and viva-voce examination i.e., the selection will be made on the basis of the total marks obtained by the candidates, the first respondent had blindly and simply clarified to the Government/second respondent, that according to the roster, the arrangement of the candidates, rank wise, was proper. The said clarification only shows the non-application of mind on the part of the first respondent, which irregularity, in fact, has made the petitioners to knock the doors of this Court, seeking justice. The said attitude of the first respondent is not appreciable. We also add, that the first respondent, being the higher judiciary and guardian of justice, instead of being a role model to other institutions for perfection and integrity, has become the cynosure of criticism, for its unjust and arbitrary action in the case on hand.

65. In view of the mandate of Article 234 of the Constitution, the High Court has to take a decision on the suitability of a candidate on the administrative side and it cannot act arbitrarily on the matter. Having given the wrong picture of roster and the incorrect clarification with regard to appointment and promotion, the Government of Puducherry and the High Court respectively have erred in discharging their responsibilities under Article 234. Therefore, the petitioners shall succeed in their prayer. Respondents 1 and 2 are directed to re-fix the seniority of the petitioners and also the impleaded fifth respondent in W.P. No. 9350 of 2009 over and above respondents 3 and 4 and also respondent 5 in W.P. No. 13629 of 2009 and provide them with all consequential benefits flowing therefrom.

66. However, noticing that the petitioners as well as respondents 3, 4 and 5 have been selected to the cadre of Civil Judge, Junior Division, and also subsequently promoted as Civil Judge, Senior Division, and on verification of the judgments of the candidates, after analysing the Annual Confidential Reports and also the reports of the Selection Committee of this Court, it is open to the first respondent to give protection to the promoted candidates, who are now in the position of Civil Judge, Senior Division, while re-fixing seniority among them and publish their seniority position in the Annual List of the Judges of Subordinate Judiciary of Puducherry, as in the case of Tamil Nadu cadre.

67. Writ Petitions are allowed. No costs. Consequently, the connected M.P. No. 2 of 2014 is closed.