

W.P.Nos.20449, 20451 and 20452 of 2015

THE HON'BLE CHIEF JUSTICE  
and  
SENTHILKUMAR RAMAMOORTHY, J.

(Order of the Court was made by the Hon'ble Chief Justice)

There is hardly any law involved in deciding the matter as the principle is quite clear and a substantial part of the exercise may already have been completed in view of some of the previous orders passed on these matters.

2. The petitions complain of the seniority list prepared on the basis of recruitment to the post of Civil Judge (Junior Division) to be completely flawed. The petitions have been filed by judicial officers who were recruited in 2009.

3. There is a 200-point roster based on reservation which is followed in this State. The rationale of such a roster, whether it is a 40-point or a 100-point or a 200-point roster, is that it indicates slots for candidates belonging to specified classes of the reserved

categories and for candidates in the unreserved category to be filled in and recruited accordingly. It appears that though the 200-point roster may have been referred to by the State Public Service Commission, the agency tasked with conducting the recruitment exercise in 2009, the exacting rules relating to how to fill in the slots may not have been adhered to. These rules are now judicially recognised and are uniformly applied in the country, irrespective of whether it is a 40-point or a 100-point or a 200-point roster. All that the roster system means is that it is repetitive and indicates how the first 40 or 100 or 200 places must be filled up and the subsequent 40 or 100 or 200 places are also filled up in the same manner.

4. There are also laws, which may vary from one State to the other, as to how to fill in a reserved vacancy for which no candidate is found. Ordinarily, this requires permission from an authority named in the relevant statute upon two or more failed attempts to fill in the relevant vacancy. It is also possible that no latitude is given to fill in a reserved vacancy meant for a particular class by

either a representative from the unreserved category or from any other category.

5. As to the rules pertaining to the roster, for example, if there are eight categories apparent from the roster, one of them being the unreserved category, all the categories have slots in terms of serial numbers indicated in such roster. If then, there is any cut-off mark set for the selection process, the first exercise is to discover the candidates eligible on the basis of the cut-off mark and arrange their names in descending order of marks obtained and fill in the slots as per their respective categories in declining order of merit. The person with the highest marks in a particular category obtains the first available slot in the 200-point roster reserved unto such category and so on. Likewise for the other categories.

6. There is only one exception to this general rule. Loosely speaking, affirmative action by way of reservation proceeds on the basis that all reserved category candidates are disadvantaged qua the unreserved category candidates. Thus, if any reserved category

candidate gets the requisite marks that would have entitled such candidate to obtain a slot in the roster as an unreserved category candidate, the relevant slot is taken by the meritorious reserved category candidate as a defacto unreserved category candidate. As a consequence, if 20 candidates out of a reserved category obtain the qualifying marks and the first of them gets higher marks than what the last-placed unreserved category candidate requires to find a place on the roster, such reserved category candidate will be regarded as an unreserved category candidate and fill the relevant slot meant for an unreserved category candidate and, to such extent, there will be an additional candidate from the relevant reserved category who will get an opportunity to be recruited.

7. The principle is the same across the country, but the matter of filling up the slots depends on the governing statute, which may differ from one State to another.

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8. The appearing parties agree that the law in such regard is as has been casually summarised above.

9. Indeed, pursuant to the earlier directions of this Court, revised lists have been prepared and submitted by the State Public Service Commission on the basis of the law as recognised hereinabove.

10. In fact, though the petitions pertain to the 2009 batch of Civil Judges (Junior Division), it appears that the State Public Service Commission committed the same mistake in course of the earlier 2003 recruitment and the subsequent 2012 recruitment and this High Court issued letters of appointment or prepared the seniority lists strictly as per the order of names furnished by the State Public Service Commission while recommending the candidates who ought to be recruited. Since it is the right of every judicial officer to be placed in the appropriate slot in the seniority list, the revised seniority lists were sought for the 2003 and 2012 batches in addition to the 2009 batch. These lists were produced in a sealed envelope which was opened earlier. Copies of the relevant lists may be circulated to the parties who seek to obtain the same.

11. At any rate, copies of such lists will be forwarded to advocates on record representing the petitioners in each of the petitions, to the office of learned Advocate-General, to Mr.V.Vijay Shankar, representing the High Court administration, and to Mr.V.Prakash, Senior Advocate, representing some of the petitioners.

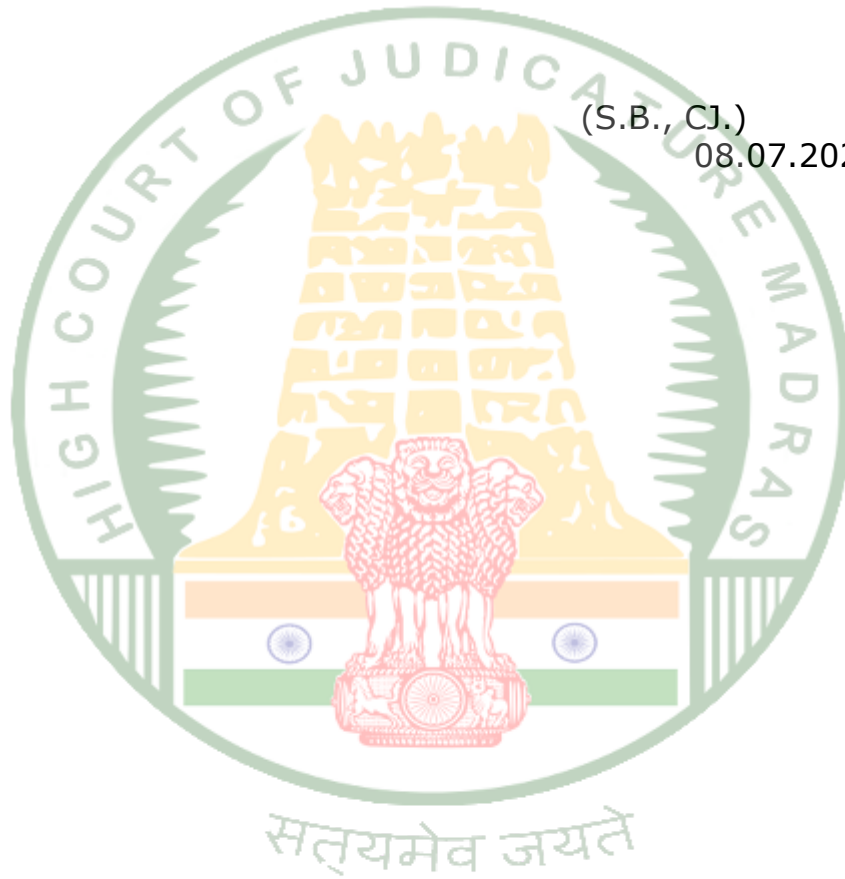
12. Mr.V.Prakash will head a committee, also comprising Mr.V.Vijay Shankar, Ms.C.N.G.Niraimathi and the President or Secretary of the association of judicial officers in this State. The committee will go through the lists after obtaining the results of all the candidates who participated in 2003, 2009 and 2012 recruitment examinations and matching the marks obtained against the slots allotted in the revised draft lists in accordance with the law as recognised in the initial part of this order. In the event of any doubt, the principles referred to in the judgment reported at (2003) 5 SCC 604 (*Bimlesh Tanwar v. State of Haryana*) and the law as laid down by the Supreme Court thereafter should be applied in the

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context of the State law as to reservation.

Such exercise should be completed by the end of next week so that these matters may appear on July 19, 2021 at 2.15 pm.

sasi



(S.B., C.J.) (S.K.R.,J.)  
08.07.2021

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