

Satheesh Kumar M. Vs. Travancore Devaswom Board and ors.

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Court : Kerala

Decided On : Mar-02-2009

Reported in : 2009(1)KLJ789

Judge : T.R. Ramachandran Nair, J.

Acts : Travancore Cochin Hindu Religious Institutions Act, 1950 - Sections 35, 35(2) and 35(3); Public Service Act, 1961; Kerala Education Act - Sections 12; Kerala Education Rules; Kerala Service Rules; Kerala Civil Services (Classification, Control & Appeal) Rules, 1960 - Rules 2 to 4, 5 and 8; Regarding Service Conditions of Devaswom Employees Rules - Rule 9 and 9(3)

Appeal No. : W.P.(C) No. 21062 of 2007 (G)

Appellant : Satheesh Kumar M.

Respondent : Travancore Devaswom Board and ors.

Advocate for Def. : Nagaraj Narayanan,; P. Ramakrishnan,; C. Anil Kumar,;

Advocate for Pet/Ap. : P. Ravindran, Sr. Adv.,; V. Vijulal and; R.T. Pradeep

Disposition : Petition allowed

Judgement :

T.R. Ramachandran Nair, J.

1. Both these writ petitions concern the same issues and therefore they are disposed of by a common judgment. Both petitioners were working as Assistant Devaswom Commissioners at the time of filing of the writ petitions. The reliefs sought for is to quash the order by which respondents 3 and 4 are assigned seniority over the petitioners. The said order is produced as Ext. P12 in Writ Petition No. 21062/2007 and Ext. P10 in the other writ petition.

2. The relevant facts in relation to Writ Petition No. 21062/2007 are the following: The petitioner entered service as L.D. Clerk pursuant to Ext. P1 appointment order dated 27-7-1981. The next promotion is to the post of U.D. Clerk. The same depends upon passing Devaswom Officers' Test and Account Test (Lower). The petitioner passed Devaswom Officers' Test on 10-2-1983 and Account Test (Lower) on 4-5-1984.

3. The petitioner in Writ Petitioner No. 34409/2007 entered service as a Lower Division Clerk on 26-10-1978 as evidenced by the appointment order Ext. P1. He has got SSLC and has passed Account Test (Lower) and Devaswom Officers' Test in June, 1982 and 8-5-1984 respectively.

4. Both the petitioners were promoted as U.D. Clerks as per order dated 5-9-2004 (Ext. P5 in Writ Petition No. 21062/07). Respondents 3 and 4 herein are juniors to the petitioners in service. The third respondent entered service as L.D. Clerk on 30-7-1981. He passed Account Test (Lower) on 4-10-1983 and the Devaswom Officers' Test on 1-6-1984. He was promoted to the cadre of U.D. Clerk on 12-9-1984. The fourth respondent entered service as L.D. Clerk on 9-11-1981 and was relieved on 10-12-1981 for want of vacancy. Later, he was reappointed and joined duty on 7-6-1982. His probation in the cadre of L.D. Clerk was declared on 15-5-1983. He acquired Account Test (Lower) and Devaswom Officers' Test only on 14-9-1983 and 1-6-1984 respectively.

5. The petitioners were promoted as Head Clerk with effect from 7-3-1986 and 9-12-1985 respectively. They were further promoted as Junior Superintend as per order dated 17-11 -1989 and 31 -5-1989 respectively. They were promoted as Asst. Devaswom Commissioner as per orders dated 17-2-1993 and 20-6-1991 respectively.

6. The third respondent was promoted as Head Clerk on 3-2-1987 and Junior Superintendent and Asst. Devaswom Commissioner on 8-8-1990 and 6-10-1995 respectively. The 4th respondent was promoted as Head Clerk on 1-9-1987, Junior Superintendent on 1-10-1990 and Asst. Commissioner 4-10-1995 respectively.

7. The Devaswom Board had framed rules for fixation of seniority and promotion as empowered under Section 35 of the Travancore Cochin Hindu Religious Institutions Act, 1950 which was brought into force as per the Gazette Notification dated 25-12-1979. This is produced as Ex. P3. The said rules superseded the provisions of the Devaswom Mannual. Rule 9 of the said Rules concerns promotion and Rule 8 concerns seniority. Rule 9(3) provides that 'Promotions in a service, or class which depends upon passing of any examination, whether general or departmental, shall ordinarily be made with reference to the condition existing at the time of occurrence of the vacancies and not with reference to those at the time when the question of promotion is taken up.'

8. After respondents 3 and 4 were promoted as Junior Superintendents, they filed representations before the Devaswom Board complaining that the principles under Rule 28(bbb) of KS & SSR should be applied to their promotion to the post of U.D. Clerk. They also contended that there were 18 vacancies at that point of time but only 16 persons were considered while considering the eligibility of persons for promotion. According to them, when the day following the last date of the examination is taken, they have acquired the test qualification prior to the petitioners, going by the amended Rules 28(bbb) of KS & SSR.

9. In Writ Petition No. 21062/2007, Ext. P9 dated 31.8.1994 is the memo issued to the petitioner seeking his objection to the matter and he submitted Ext. P10 explanation. The petitioner challenged the same by filing O.P. No. 7033/1995 wherein a stay of reversion was granted. The original petition was finally disposed of by Ext.PI 1 judgment directing the second respondent to take a decision after passing a speaking order. Ext. P12 is the resultant order passed by the Devaswom Board. In Writ Petition No. 34409/2007 Ext P.8 is the memo and Ext. P9 is the explanation.

10. In Ext. P12, the view taken is that the principles under Rule 28 (bbb) of KS & SSR are applicable to the service of the Devaswom Board even though it is not specifically implemented by appropriate orders. Regarding the number of vacancies available, it is reckoned as 18 and not 16.

11. Heard Sri. P. Ravindran, learned Senior Counsel and Shri. S. Subhash Chand learned Counsel for the petitioners, Shri Nagaraj Narayanan and Sri K.N. Venugopala Panicker, learned Counsel for the Devaswom Board and Shri. P. Ramakrishnan and Shri S.P. Aravindakshan Pillai for respondents 3 and 4.

12. Learned Senior Counsel ShitPRavindran mainly raised the following arguments: The promotion is governed by Rule 9 of the Rules (Ext. P3). The provisions of KS & SSR, especially Rule 28(bbb) which itself was brought by amendment, have not been incorporated in Ext. P3, by any amendment of Ext. P3 rules. Therefore, the qualification as on the date of occurrence of vacancy alone should have been the criteria. In the absence of anything in the rules to incorporate the principles of Rule 28(bbb), the approach made by the respondents is totally in violation of the Rules. It is further pointed out that the seniority was never under dispute and only after a lapse of 10 years, the same was sought to be raised. Therefore, the settled seniority cannot be unsettled after a long lapse of time. The decisions of the Hon'ble Supreme Court in Rabindra Nath Bose and Ors. v. Union of India and Ors. : [1970]2SCR697 , Charts K. Skaria and Ors. v. Dr. C. Mathew and Ors. AIR 1980 SC 1230 and K.A. Abdul Majeed v. State of Kerala and Ors. : AIR 2001 SC3194 and of this Court in R.K.V. Motors & Timbers (p) Ltd. v. Regional Transport Officer 1982 KLT 116, Ravunnikutty v. Rosalind and Ors. 1987 (2) KLT 716, Mohan v. State of Kerala 2000 (2) KLT 798, Usha Devi v. State of Kerala 2002 (1) KLT 615 and Balakrishnan v. A.E.O. Vadakara : 2005(4)KLT64 were relied upon in support of the above pleas. Learned Counsel Shri S. Subhash Chand supported the above arguments of the learned Senior Counsel.

13. The main arguments raised by shri Nagaraj Narayanan, learned Standing Counsel for the Devaswom Board are that in Ext. P3 itself in Rules 2 and 3, it has been made clear that the conditions of service will be governed by the provisions of K.S.R. and the rulings and Government Order issued by the Government from

time to time. The above rules are not exhaustive and does cover all the contingencies. The Devaswom Board was applying the principles in Rule 28(bbb) even on earlier occasions and even prior to the introduction of the rule, there are Government Orders in force applying the said principles which were being followed by the Board from time to time. Therefore, the said practice which is based on a reasonable criteria is sought to be followed and hence it cannot be violated. It is further submitted that were two more vacancies which were not considered at the relevant point of time and therefore respondents 3 and 4 who were entitled to be considered for those vacancies, by applying the principles of Rules 28(bbb) were found eligible for restoration of the benefit. It is further pointed out that from 1995 onwards the matter could not be finalised in view of the challenge made by the petitioners in the writ petition filed before this Court. Therefore, the sit back theory cannot apply to the facts of this case.

14. The first question is whether going by the scheme of the rules provided in Ext. P3, the principles stated in Rule 28(bbb) could be applied. Going by Rule 9(3) of the rules, promotions in a service, or class which depends upon passing of any examination, whether general or departmental, shall ordinarily be made with reference to the condition existing at the time of occurrence of the vacancies and not with reference to those at the time when the question of promotion is taken up. Under Explanation to Rule 28(bbb), the principles in the Sub-rule shall apply for the drawal of increments and for promotion not involving change of duties against vacancies remaining unfilled for want of test qualified persons. As per Sub-rule (b) of the said provision, the day following the last day of the whole examination or test in which the person has successfully completed the examination or test by passing one or more subjects, is the relevant criteria. Admittedly, such a provision is not there in Ext. P3 rules. The provisions of KS & SSR have not been incorporated or adopted in Ext. P3. Even by a reference the said principles have not been made applicable.

15. Herein, one more thing has to be noticed: Rule 28(bbb) was substituted as per G.O(P) No. 447/1984/GAD dated 10-12-1984, which was published in the Kerala Gazette No. 9 dated 26-2-1985. Ext. P3 rules are of the year 1979. As noted already, the Rules of KS & SSR are not incorporated by reference in Ext. P3 rules.

Rule 9 of Ext. P3 has not been amended at all even to adopt the principles engrafted in Rule 28(bbb).

16. A similar question was considered under the Kerala Education Rules by a Division Bench of this Court in Balakrishnan's case (: 2005(4)KLT64 . While considering the question whether rule (bbb) will apply to aided school teachers, it was held that 'Rule 28 (bbb) in the KS & SSR had been framed under the Public Service Act, 1961. It is apparently not applicable to the aided school teachers. The service conditions of aided school teachers are as contained in Chapter XIV-A K.E.R. which is prescribed in terms of Section 12 of the Kerala Education Act. Therefore, Rule 28(bbb) as such cannot be pressed into their service conditions, as it does not form part of the Chapter XIV-A KER'.

17. Herein, the rules have been framed as provided under the Travancore Cochin Hindu Religions Institutions Act, 1950 under Sub-section 2 of Section 35. The rules are titled as 'Rules Regarding Service Conditions of Devaswom Employees'. In that view of the matter, as Rule 28(bbb) have not been specifically incorporated in the rules also, there cannot be any applicability of the above rule in the matter of promotion. The provisions of KS & SSR are applicable only to the State and Subordinate Services. The principles of legislation by incorporation by reference is an accepted legislative device. Only if such incorporation is made mention of in the relevant statutory rules, it could be applied. The said position was explained by the Apex Court in Nagpur Improvement Trust v. Vasantrao and Ors. : [2002]SUPP2SCR636 . In para 31 it was held thus:

When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it. The incorporation of an earlier Act into a later Act is a legislative device adopted for the same of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or citation of the provisions of an earlier statute. In a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the

incorporated provisions of the earlier Act constitutes an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in a later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction.

18. Admittedly, herein there is no incorporation or adoption of the provisions of KS & SSR either expressly or by specific reference in Ext. P3. Therefore, the argument raised by the petitioners that the said principle cannot be adopted, is well founded.

19. The further question is whether the contention raised but the learned Standing Counsel for the Devaswom Board that Rules 2 and 3 will satisfy the adoption of the said principle, is correct or not. For easy reference, rules 2 and 3 of Ext. P3 are extracted below:

2. The conditions of service of all devaswom employees envisaged in these rules shall be deemed to have been governed with effect from the 1st April 1963 by the rules contained in the Kerala Service Rules promulgated by the Kerala Government and the G.Os issued from time to time by the Kerala Government from 1st November 1956, in so far as they have been adopted by resolutions taken by the Board and in so far as they are not repugnant to the context of the services under the Devaswom Board.

3. The conditions of services of Devaswom employees envisaged under these rules, shall continue to be governed by the rules contained in the Kerala Service Rules promulgated by the Kerala Government and the ruling and G.Os. issued by the Kerala Government from time to time in so far as they are not repugnant to the context of services under the Board, and until the Board frames independent and comprehensive rules to govern the services of their employees.

The argument raised is that till the Board framed independent and comprehensive rules, these provisions will apply. On a detailed scrutiny of the rules it is evident

that the said argument cannot be sustained. Rule 2 only stipulates that those provision of KSR and the Government Orders issued from time to time and adopted by the Board and in so far as they are not repugnant to the context of the service under the Board, would apply as regards the conditions of service of all Devaswom Board employees with effect from 1-4-1963. Under Rule 3 also, the specific mention is only in respect to rules of KSR and the rulings and Govt. Orders issued by the Government from time to time. That only means that the provisions of KSR and the rulings and Government Orders contained therein issued by the Government from time to time unless they are repugnant to the services under the Board, will apply. Here, what is sought to be applied is the provisions of Rule 28(bbb) of KS & SSR. There is no mention of any rules of KS & SSR either in Rule 2 or in Rule 3 or in Rule 9. Therefore, reference to rulings and Government Orders i Rule 3 will have reference to those rulings and Government Orders which form part of the KSR alone. This is further clear on a reading of Rules 4 and 5. Rule 4 governs disciplinary proceedings and it is mentioned that they well be governed by the provisions of Kerala Civil Services (Classification, Control & Appeal) Rules, 1960, in so far as they are not repugnant to the conduct of the service under the Board. Rule 5 confers power on the Board to take a decision if any dispute or doubt arises as to the applicability or interpretation of the Rules contained in KSR or KCS (CC & A) Rules. A combined reading of Rules 2 to 4 along with Rule 5 make it clear that what is made mention of in Rule 2 to 4 along with Rule 5 make it clear that what is made mention of in Rule 3 is about the rules in KSR and the rulings and Government Orders issued by the Government from time to time under the said rules. The second limb is only a corollary to the first one, and not independent of it. It cannot have any application to the Government Orders or rules coming under the KS & SSR. Therefore, the argument raised by the learned Standing Counsel for the Board that Rule 3 empowers the Board to make applicable the relevant provisions of KS & SSR and the Government Orders issued which were being followed by the Board from time to time, even after Ext. P3 rules were adopted in 1979, cannot hold good. One of the contentions raised by the respondents herein is the principles under Rule 28(b) was incorporated in Rule 9 of Ext. P3 and Rule 28(bbb) being only an explanation to Rule 28(b), that will automatically be applicable and hence there is no illegality. The Board has

taken a further contention that it is the discretion of the appointing authority to apply any of the two principles which determine the date of passing of examination and such an interpretation of the principles is not unreasonable, arbitrary or unfair in view of the application of the same principle in Government service by virtue of Rule 28(bbb).

20. The question is whether the appointing authority has got unlimited discretion in such matters. The statutory rules prescribe a particular mode governing the fixation of seniority and promotion. The rules have been framed as empowered under Section 35(2)(e) of the Travancore Cochin Hindu Religious Institution Act, 1950. Therefore, these rules are the statutory rules governing the matter. It is well settled that when the rules provide for a particular principle to be adopted for fixing the seniority and the qualification for promotion, the appointing authority cannot adopt their own principle from their discretion dehors the statutory rules. A person who is qualified for promotion under the relevant statutory rules cannot be denied such right by adopting any other principle which is not covered by the express provisions of the said rules. It is also a well settled principle that when rules have been framed under a statute, executive instruction which were, in existence till then, cannot have any applicability. When they are in conflict with the subsequent statutory rules, the statutory rules alone prevail. The attempt by the respondents to contend, therefore, that prior to the coming into force of 1979 rules, they were adopting the particular Government Orders and therefore even after the adoption of 1979 rules, they should have application in addition to what is provided in Ext. P3 rules, cannot therefore hold good. Going by Sub-rule (3) of Rule 9 of Ext. P3 Rules, the promotions which depend upon passing of any examination, whether general or departmental, shall ordinarily be made with reference to the conditions existing at the time of occurrence of the vacancies and not with reference to those at the time when the question of promotion is taken up. Therefore, the petitioners, if they are qualified as on the date of occurrence of vacancies, are entitled to be promoted. The additional prescriptions now sought to be made by adopting the principles of Rule 28(bbb) has no recognition under the relevant rules. Therefore, the above contentions cannot be accepted at all.

21. In the additional counter affidavit filed by the Devaswom Board dated 17-12-2008 and in the affidavit dated. 19-1-2009 they have produced various orders in the matter. Exts. R1(j) and R1(k) are copies of G.O. (MS) Nos. 235/71/PD dated 14-8-1971 and 303/73/PD dated 21-11-1973 which provides that date of passing of departmental test is reckoned as the day following the last date of departmental test. It is stated that they are not repugnant to 1979 rules and those orders are even now applied in the Board. Ext. R1(1) which is an order dated 26-11-2008 of the Devaswom Commissioner is produced in support of the above plea. It is stated that in the margin the petitioner in Writ Petition No. 21062/2007 has also put his signature. Exts. R1(m) to R1(o) are produced to show that the Board has been adopting the said principle in fixing the seniority. Therefore, it is contended that the said practice followed by the Board prior to 1979 and which are followed even after 1979 rules were effected, should be recognised. It is trite law that a past practice can be recognised and need not be upset, but it is conditioned by salutary principles that the said practice should confirm to the relevant rules. As regards seniority or for promotion, it is well settled that the criteria laid down in the statutory rules alone will prevail and any other criteria cannot be followed contrary to the same or to defeat the express provisions of the statutory rules. A similar question was considered by the Hon'ble Supreme Court in the decision reported in T.N. Housing Board v. Balasubramaniam and Ors. : (2004)6SCC85 . In the matter of promotion, the statutory regulations and the executive instructions provided different eligibility criteria. It was held that the statutory regulations will prevail. The principles were laid down thus:

Once the eligibility criteria are considered to be a prerequisite for giving effect to the statutory Regulations, the purported executive instructions would not be applicable. Once it is held that relying on the basis of the executive instructions in terms of Regulations 28(a), the Draftsman who have been getting higher salary are given preference over the diploma-holder Junior Engineers, the eligibility criteria contained in the statutory Regulations would become otiose; the logical corollary thereof would be that the executive instructions would prevail over the statutory Regulations. Such a consequence would lead to an absurdity and in that view of the matter it must be held that the executive instructions cannot be given effect to.

Hence, the provisions of Rule 9(3) will prevail over any other executive orders.

22. Whatever might have been the practice prior to 1979, once the Devaswom Board has framed statutory rules in the year 1979 as per Exts. P3, in fixing the seniority and in effecting promotions, rules 8 and 9 of the said rules alone will govern. After the 1979 rules have come into force, no amendment has been made to the same by incorporating the principles governing Rule 28(bbb). Even Rule 28(bb) is not incorporated in Rule 9 by reference or adoption. Rule 9 is an independent one having its own effect in the matter of promotion. In that view of the matter, the past practice cannot govern the situation after the framing of the 1979 rules. Even if it shown that in some other cases the said principles was adopted, that can only be termed as a wrong application of the principle without any support from the statutory rules framed under Section 35(3) of the Act. The Board cannot go behind the rules and apply the principles governed by various Government Orders which were issued prior to 1979 like Exts. R1(j) and R1(k). Therefore, I do not find any merit in the said argument. Ext. R4(c) produced along with the counter affidavit is the resolution passed by the Board prior to the promulgation of Ext. P3 rules. Therein, the only resolution is to adopt rules 27 and 28 contained in the KS & SSR with suitable modifications. Therefore, it is clear that there is no resolution adopting the provisions of Rule 28(bbb) at any point of time. Merely because KS & SSR was amended with retrospective effect to introduce Section 28(bbb), that cannot be automatically accepted as part of the rules framed by the Board. Therefore, the argument that the contends of Rule 28(bbb) could be adopted by the Board, cannot hold good. Learned Standing Counsel further submitted that if any deviation is made from the practice followed by the Board that may result in other difficulties. But when the validity of actions are tested by express legal principles governing the matter, individual hardship cannot be the criteria to validate such actions. Therefore, the said argument cannot be accepted. There is no case that anybody else have challenged the orders fixing seniority concerning them.

23. Therefore, I am of the view that the view taken in Ext. P12 that the principles of Rule 28(bbb) could be adopted to grant promotion to respondents 3 and 4, cannot be sustained. Therefore, Ext. P12 cannot hold good.

24. The other contentions raised by the learned Counsel for the petitioners is based on the site back principle enunciated in Rabindra Natha Bose's case : [1970]1SCR421 and followed in a large number of cases. In the above said case, their Lordships held in para 35 that 'each person ought to be entitled to site back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.' This principle was restated in State of Kerala's case (2001) 6 SCC 292. A Division Bench of this Court in Usha Devi's case (2002 (1) KLT 615) while considering a question whether in the absence of a challenge against the seniority at the appropriate time, whether it could be considered after a long lapse of time, held that 'erosion of rights by passage of time is a principle well recognised in law. By resorting to complacency over a span of years, the petitioners has lost whatever rights she had to challenge the 'irregular' assignment of seniority to her juniors. It is clear that the contention is merely self serving. The seniority of a person once recognised, remained as a right throughout, and was not liable to be brushed aside at the fancy of a third person, and at his will.' The very same principle was followed by a Division Bench of this Court in Mohanan's case (2000 (2) KLT 798 and in a recent decision of the Apex Court in Union of India and Ors. v. Tarsem Singh ILR 2008 Ker. 752. In this case, the order of promotion is dated 5-9-1984 (Ext. P3 in Writ Petition No. 34409/2007) whereby the petitioners have been promoted as Upper Division Clerks. Ext. P8 memo is issued by the Board on 31-8-1994, nearly 10 years after, based on the complaint raised by respondents 3 and 4. The date of their complaint is not mentioned in it. What is stated is only that 'now they have given complaints'. The petitioners have averred that the complaints were raised only while they were holding the post of Junior Superintendent which is not disputed also. It is clear that the said complaints were filed nearly a decade after Rule 28(bbb) was amended in the year 1985. If, as a matter of fact, the Government Orders prior to 1979 were being adopted by the Board, nothing prevented the contesting respondents from raising the issue at the relevant point of time when the petitioners were promoted as Upper Division Clerks. The argument raised by them is that the vacancies were not properly assessed at the relevant time by the Devaswom Commissioner. It is also pointed out that only on 1-1-1994 the post of Lower Division Clerk and Sub Group Officers were integrated. But all those reasons cannot unsettle the rights

accrued by the petitioners in the promoted post. In that view of the matter also, the order produced in the writ petition as Ext. P10 and P12 cannot survive. Petitioners' promotion to the various posts are legal and valid.

25. The petitioners were assigned seniority over respondents 3 and 4 in the cadre of Upper Division Clerks onwards up to the cadre of Asst. Commissioner. Subsequently, they have been promoted as Deputy Devaswom Commissioner also. But as far as the petitioner in Writ Petition No. 21062/2007 is concerned, pending the writ petition he was ordered to be reverted by Ext. R1(p) order dated 25-11-2008 consequent on the reinstatement in service of one Shri. B. Unnikrishnan who was under suspension. In the interim order dated 18-12-2008, this Court directed the respondents not to revert the petitioner from the category of Deputy Devaswom Commissioner until further orders after prima facie satisfying that he is entitled to continue in the category of Deputy Devaswom Commissioner. By Ext. R1(r) order dated 19-12-2008, passed in D.B.P. No. 10/2008, the Division Bench had ordered that he will be allowed to continue in the office of the Commissioner till the Sabarimala season is over, on working arrangement.

26. In view of the fact that Ext. P12 is found illegal, automatically his reversion from the post of Deputy Devaswom Commissioner cannot also survive. He will be entitled to seniority above respondents 3 and 4 and thus will be entitled to continue as Deputy Commissioner and will be entitled to all benefits as if he was not reverted and especially in the light of the interim orders passed by this Court.

27. The Board in its counter affidavit, has produced the seniority list of qualified Lower Division Clerks as on the date of occurrence of vacancy, in which the petitioners are serial Nos. 3 and 12 and respondents are serial Nos. 17 and 19. It is stated that 18 vacancies occurred between 1-4-1983 to 31-5-1984. If that be so, no infirmity can be attached to the order of promotion Exts. P5 and P3 dated 5-9-1984. In that view of the matter, the petitioner's promotion in subsequent cadres of Junior Superintendent and Asst. Commissioner, etc. treating them as seniors to respondents 3 and 4 are valid. It is declared so.

28. Another contention raised is regarding the finding in Ext. P12 that two more vacancies existed on the date of passing of the order of promotion which were

overlooked by the Commissioner. Those vacancies are characterized as 'vacancies in the Board'. In the light of the view taken regarding the validity of Ext. P12 order and regarding the promotions ordered in favour of the petitioners, I need not go into such factual disputes in these writ petitions.

29. In the result, the writ petitions are allowed. Ext. P12 in Writ Petition No. 21062/2007 and Ext. P10 in Writ Petition No. 34409/2007 are quashed. The petitioners will be treated as seniors to respondents 3 and 4 in the cadre of Upper Division Clerks and in the higher posts to which they have obtained promotion accordingly. Appropriate orders will be passed in accordance with the findings contained in this judgment, within one month from the date of receipt of a copy of this judgment.

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