



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. OF 2025
[Arising out of SLP (C) Nos. 5137-38 of 2021]

R. RANJITH SINGH & ORS. ...APPELLANT(S)

VERSUS

**THE STATE OF TAMIL NADU ...RESPONDENT(S)
& ORS.**

WITH

CIVIL APPEAL NO. OF 2025
[Arising out of SLP (C) No. 20061 of 2022]

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. Leave Granted.
2. The present appeals are arising out of common judgment dated 08.01.2020 passed in Writ Petition No. 25263/2009 and Writ Petition No. 33544/2018 by High Court of Judicature at

Madras, which relates to disputes concerning seniority in the cadre of Sub-Inspector of Police in the State of Tamil Nadu.

3. The undisputed facts of the case reveal that the appellants before this Court were appointed as Sub-Inspectors of Police through a process of selection, keeping in view Tamil Nadu Police Subordinate Service Rules, 1955 (hereinafter referred to as “1955 Rules”). The 1955 Rules have been framed in exercise of powers conferred under the Tamil Nadu District Police Act, 1859, Chennai City Police Act, 1888 and Article 309 of the Constitution of India. The recruitment rules provide for various modes of recruitment which includes; (a) recruitment by transfer; (b) direct recruitment; and (c) recruitment by promotion. In the present case, the statutory provisions necessary to decide the controversy involved (relating to direct recruitment and promotion) are reproduced hereunder:

“Rule 3 – Method of Appointment and promotion

(a) (i) Appointment to the several classes and categories shall be made as indicated in Annexure – I.

(ii) Persons who were already included in the ‘C’ list for a particular year but not promoted before the expiry of the validity of the said list be considered for higher place in the list drawn in the subsequent year on merits of each case in preference to other persons included in the ‘C’ list.

(b) (i) Promotion to the under mentioned posts shall be made on grounds of merit and ability

seniority being considered only where merit and ability are approximately equal.

*Inspectors – Inspector of Police
(Fingerprint)*

Senior Reporter, Shorthand Bureau, Vellore

*Sub-Inspectors-Sub Inspector of Police
(Fingerprint)*

*Assistant Sub-Inspectors (Omitted as per
G.O. No. 721 (Home dated 26-4-1 w.ef. 3-5-1990)*

Reserve Inspectors

Reserve Sub-Inspectors

*Reserve Assistant Sub-Inspector (Deleted in
G.O.Ms. No. 1827)*

*Head-Constables including Band Head
Constables, Office of the Director General of
Police, Madras.*

*Reserve Head Constables including
Armourers, Signallers and Motor Transport
Drivers.*

*(ii) Such promotion shall be made from a list
of qualified candidates suitable for promotion
prepared and finalised by*

*(a) The State Promotion Board constituted by
the Director General of Police, subject to the
appointment of the Government from time to time in
the case of promotion to the post of inspectors,
reserve Inspectors and Senior Reporters, Shorthand
Bureau, Madras from the ranks of Sub-Inspectors,
Reserve Sub-Inspectors and Junior Reporters,
respectively.*

*(b) The Range Promotion Board in respect of
various units as detailed below, subject to the*

approval of the Deputy Inspector General of Police or Commissioner of Police, Madras, as the case may be in respect of promotion from the posts of Head constables to Reserve Sub-Inspectors and from the post of Had Constables to Sub-Inspectors (There shall be only one combined list for promotion from the rank of Head Constables to Sub-Inspectors).

The Range Promotion Board of the Range specified in Column (1) of the Table below shall consist of the District and Unit specified in the corresponding entries in Column (2) therefor.

xxxx

xxxxx

xxx

xxx

Annexure – 1
[Referred to in rule 3(a)]

<i>Class and Category</i>	<i>Method of Appointment</i>	<i>Limitation</i>	<i>Appointing Authority</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Class I - Category 1 Inspector of Police</i>	<i>Promotion from Sub-Inspectors of Police</i>	<i>Nil</i>	<i>In the mofussil, the Deputy Inspector – General of Police concerned and in the Madras City Police, the Commissioner of Police in consultation with the Director General of Police</i>
<i>Category 1A Inspector of Police (Finger Print) G.O. Ms. No. 395 Home Police (VI) dated 20.04.2000</i>	<i>By Promotion from category 2A</i>	<i>Nil</i>	<i>DIG of Police in charge of Technical Service.</i>

<p>Category 2 -Sub Inspectors of Police Substituted in G.O. Ms. No. 1254 Home, dated 16.7.92</p> <p>Added in G.O. Ms. No. 559,</p>	<p>Promotion from Head Constables (other than Band Head Constables, Office of the Director General of Police, Madras and Reserve Head Constables including Armourers, Signallers and Motor /transport Drivers).</p> <p>Director Recruitment (G.O.Ms. No. 2635 Home (Pol.III)-Dept. dt. 22.9.86)</p>	<p>Promotion and Director recruitment is 40:60. Provided that not more than 20% of vacancies of Direct Recruitment quota shall be filled up from among the members of the service in categories 7 & 8 in Class I and also from among the members in Categories 4, 5 and 6 of TNSPSS.</p> <p>Provided further if departmental candidates are not available to fill up the 20% of vacancies of direct recruitment from among the members of the service in categories 7 & 8 in Class I and also from among the members in category 4, 5 and 6 of the TNSPSS, candidates from open market shall be selected and the vacancies shall be filled up accordingly.</p> <p>Provided further that 30% of vacancies of Direct Recruitment</p>	<p>In the mofussil, the Dy Insp. Genl. Of Police, concerned and in the Madras City Police the Commissioner of Police.</p>
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Home Dated 29.3.96		quota shall be reserved for women and the provisions in Adhoc Rules issued in G.O.Ms. No. 2586 Home dt. 1.11.74 shall apply to them.	
Category 2A – Sub Inspector of Police (Finger Print) G.O.Ms. No. 395 Home Police VI dated 20.4.2000	Direct Recruitment		DIG of Police in charge of Technical Service.

Rule 25 which deals with Seniority is reproduced hereunder:

“Rule 25. Seniority:

(a) The seniority of a person in any class or category of the service shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank obtained by him in the list of approved candidates drawn up by the appointing authority, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority unless he has been appointed temporarily under sub rule (d) of rule 10 or sub rule (b) of rule 15 as the case may be.

Provided that in the case of Sub-Inspectors (recruited direct) (category 2 of class I) the seniority shall be fixed on the basis of the marks obtained by them in the final examination in the Police Training College, Vellore.

Provided further that in respect of direct recruitment made in the years 1976 and 1979 to the posts of Sub-Inspectors of Police, Reserve

inspectors of Police by the Tamil Nadu Public Service Commission the seniority shall be fixed with reference to the rank assigned by the Tamil Nadu Public Service Commission in the list of selected candidates communicated by it.

*Inserted in G.O.Ms.No.767, Home (Pol-III)
Dept. dated 28.3.85*

Provided further that all directly recruited Assistant Sub-Inspectors selected for direct recruitment as Sub-Inspectors shall be placed as a block above the fresh direct recruits but interse again they shall retain their original seniority in the list of Assistant Sub-Inspectors.

G.O.Ms.No.2168, Home dated 17.8.72

Provided further that in the case of Reserve Sub-Inspectors (category 4 of class I) the seniority shall be fixed on the completion of training with the Special Armed Police instead of at the time of selection but such seniority shall be liable to revision by the Deputy Inspector General of Police concerned, if he considered it necessary, before the completion of probation.

Provided also that the required number of Head Constables fit for promotion to the post of Sub-Inspector shall be included in the order of merit on the basis of the result of the examination specified in clause (ii) of sub rule (e) of rule 18 and re-arranged in the order of seniority in the post of Head Constable.

G.O.Ms.No.1883, Home dated 5.8.87

This sub rule shall apply to any member of the service other than Sub-Inspectors appointed on or after 1st January 1962. It shall also apply to Sub-Inspectors appointed on or 25.8.1965.

(b) The transfer of a person from one class or category of the service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of a person so transferred, shall be determined with reference to the rank in the class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub rule seniority shall be determined by the appointing authority.

(c) Where a member of the service in any class or category is reduced to a lower class or category he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall take rank in such lower class or category next below any specific member thereof.

(d) The seniority of any person in a service or post of the merged territory of Pudukottai who is absorbed in a post in this service shall be determined as follows:

(i) if he is absorbed in a post similar to that which he was formerly holding in the service of the merged territory of Pudukottai, his seniority shall be determined by the date from which he was holding the former post continuously.

(ii) if he is absorbed in a post of a higher cadre carrying a higher scale of pay than that which he was formerly holding in the service of the merged territory of Pudukottai, his seniority shall be determined by the date on which he joined the post in this service.

(iii) if he is absorbed in a post other than those specified in clauses (i) and (ii) which do not improve his cadre and scale of pay in the service of

the merged territory of Pudukottai his seniority shall be determined on the basis of merit.

(e) The seniority of qualified special Armed Policemen appointed by transfer as Constables in this service shall be determined by the date of their first appointment in this service for purposes of confirmation in vacancies in this service."

4. Under the 1955 Rules, until the year 1995, Head Constables were considered for promotion to the post of Sub-Inspectors under the promotion quota fixed for them and it is an undisputed fact that there was no quota prescribed for them to participate in the direct recruitment process which was meant only for open market candidates. Head Constables serving the police department submitted various representations to the government. Keeping in view their stagnation, the Government of Tamil Nadu issued G.O.(Ms.) No. 1054 dated 13.07.1995 reserving 20% of vacancies under the Direct Recruitment quota to be filled up only from constabulary services. The relevant extract of the said G.O. dated 13.07.1995 is reproduced as under:

"At present, selection to the post of Sub-Inspectors of Police Men (direct recruitment) is conducted by the Tamil Nadu Uniformed Services Recruitment Board. In order to encourage the Police Constables and Head Constable to enhance their efficiency and educational qualification for early promotion as Sub-Inspector of Police, it is considered that a 20% reservation could be made in the direct recruitment to the post of Sub- Inspector of Police. Further, in its judgment dated 18.01.1995 in O.A. No. 1368/94

(batch cases) the Hon'ble Tamil Nadu Administrative Tribunal suggested that it would be desirable to have a special selection made from among the graduates working in the department who have completed 5 years of service against the direct recruitment quota.

2. The Government have examined the matter in detail. Accordingly, they direct that 20% of the vacancies in the direct recruitment of the Sub-Inspector of Police be reserved for the Police Constables and Head Constables in category I and their equivalent ranks in the Armed Reserve and Tamilnadu Special Police Branch in category II and III. The direct recruitment quota of Sub-Inspector of Police will be filled 80% by from open market and 20% from serving police personnel in all the three categories. (emphasis supplied)

3. The recruitment shall be made by Tamilnadu Uniformed Services Recruitment Board against this 20% reservation in each Year of direct recruitment from among the police constables and Head Constables and their equivalent rank in Armed Reserve and Tamilnadu Special Police who are graduates and who have completed 5 years of service. The candidates should have a clean record without any punishments, other than the minor punishments of black mark, reprimand or censure, in the 5 years preceding the date of notification of selection.

4. The Tamilnadu Uniformed Services Recruitment Board shall follow the prescribed norms and procedures adopted in the direct recruitment selection of Sub-Inspectors such as physical measurements, physical efficiency test, written test viva voce etc., The inter-se seniority of the

candidates selected against this recruitment would be above those selected in the open competition in the year: (emphasis supplied). ”

The aforesaid G.O. further provided that inter-se seniority of the candidates selected under the 20% in-service candidates would be placed above those selected in open competition in that year by way of direct recruitment. The G.O. dated 13.07.1995 was only an executive order and the Rules framed under proviso to Article 309 were not amended. Realising this mistake, another G.O. (Ms.) No. 1627 dated 24.10.1996 was issued proposing to amend the Rules in order to give 20% vacancies to in-service candidates and to give seniority to them over and above the directly recruited candidates recruited through the open market. The relevant extract of G.O. dated 24.10.1996 is reproduced as under:

“ABSTRACT

POLICE – Special recruitment to the post of Sub-Inspectors of Police from Police Constable/Head Constable against 20% posts of Sub-Inspectors of Police under direct recruitment quota- Orders issued – Amendments to Special Rules for Tamil Nadu Special Police Subordinate Service – Issued.

HOME (POLICE.III) DEPARTMENT

G.O.Ms. No. 1627

Dated: 24.10.1996

Read:

G.O.Ms. NO. 1054,;Home dated 13.07.95

Read Also:

*From the Director General of Police, Chennai
Letter No. 81042/R&T(1)/95, dated 23.08.95*

ORDER

*The following Notification will be published
in the Tamil Nadu Government Gazette:*

NOTIFICATION

In exercise of the powers conferred by Sections 8 & 10 of the Tamil Nadu District Police Act, 1859 (Central XXIV OF 1059) and sections 9 and 11 of the Madras City Police Act, 1888 (Tamil Nadu Act III of 1888), read with the proviso to Article 309 of the Constitution of India and of all other powers hereunto enabling, the Governor of Tamil Nadu hereby makes the following amendments to the Special Rules for the Tamil Nadu Special Police subordinate Service (Section 34 in Volume III of the Tamilnadu Service Manual, 1970.)

2. The amendment hereby made shall be deemed to have come into force on the 13th July 1995.

AMENDMENTS

In the said Rules,

(1) in rule 7, in sub-rule (a), in the Table, in column (3) against the entry “2(a) Sub-Inspectors” in column (i) thereof, for the entries, the following entries shall be substituted, namely:

1. *Promotion from Havildars or*
2. *Direct Recruitment;*

Provided that proportion in which vacancies shall be filled up by the methods specified in items (1) and (2) above shall be 40: 60 percent of the Cadre:

Provided further that not more than 20% vacancies of direct recruitment quota shall be filled up from among the members of the service in categories 4, 5 and 6 and also from the members in categories 6 and 7 in Clas 1 of the Tamilnadu Police Sub-ordinate Service, who are graduates and have put in five years of service in their respective categories.

(2) in rule 24, to sub-rule (a), the following proviso shall be added, namely: -

Provided that the seniority of the Sub-Inspectors of Police directly recruited from among the members of this service and the members in the Tamil Nadu Police Subordinate Service shall be fixed above the direct recruits selected from Open Market in the same year.”

5. It is an undisputed fact that after issuance of the G.O. dated 24.10.1996, the proposed amendment was again not notified and the G.O. was not brought into force by issuing notification in the official Gazette. The State Government of Tamil Nadu, realizing its mistake, issued another G.O. Ms. No. 461 dated 10.06.2009 proposing to amend the Rules in order to grant seniority to in-service candidates recruited under the direct recruitment quota.

The relevant extract of G.O dated 10.06.2009 are reproduced hereunder:

“NOTIFICATION

In exercise of the powers conferred by sections 8 and 10 of the Tamil Nadu District Police Act, 1859 (Central Act XXIV of 1859) and sections 9 and 11 of the Chennai City Police Act, 1888 (Tamil Nadu Act III 1888) read with the proviso to Article 309 of the Constitution of India and of all other powers hereunto enabling, the Governor of Tamil Nadu hereby makes the following amendments to the Special Rules for the Tamil Nadu Police Subordinate Service (Section 31 volume III of the Tamil Nadu Services Manual).

2. The Amendments hereby made shall be deemed to have come into force on 19.05.2008.

AMENDMENTS

In the said Special Rules:-

(1) In rule 25, in sub-rule (a), after the fifth proviso, the following proviso shall be inserted, namely:-

"Provided also that the seniority of the Sub-Inspector of Police directly recruitment from the departmental quota shall be fixed above the direct recruits selected from open quota in the same year; and..."

The aforesaid G.O. also provided that it shall be deemed to come into force with effect from 19.05.2008 and seniority of Sub-Inspectors of Police selected from constabulary services would be kept over and above that of the Sub-Inspectors of Police

selected from open market in the same year. The G.O. dated 10.06.2009 was again not notified in the official Gazette and the proposed amendment was also not brought in force. The State Government finally realizing its mistake, issued G.O. Ms. No. 868 dated 21.11.2017, which was made applicable with retrospective effect from 13.07.1995 and is the bone of contention before this Court. The relevant extracts of the G.O. dated 21.11.2017 are reproduced as under:

“ABSTRACT

Public Services - Police Department - Fixation of seniority of the 20% departmental quota candidates for the post of Sub-Inspector of Police above the open quota candidates - Amendment to rule 25 (a) of the Special Rules for Tamil Nadu Police Subordinate Services, 1955 – Orders-Issued.

Home (Police VI) Department

G.O.(Ms) No. 868

Dated: 21.11.2017

Read:

1. G.O.(Ms.) No.1054, Home (Pol.III) Department, dated 13.07.1995.
2. G.O.(Ms.) No.1626, Home (Pol.III) Department, dated 24.10.1996.
3. G.O.(Ms.) No.461, Home (Pol.VI) Department, dated 10.06.2009.

Read also:

4. From the Director General of Police, Chennai, letter Rc.No.168187/Rect.II(1)/2016, dated

18.01.2017, 18.07.2017, 02.08.2017 and
24.08.2017.

ORDER:

In the Government Order first read above, orders were issued reserving 20% of the vacancies in the direct recruitment quota of the Sub-Inspector of Police for the Police Constables and Head Constables in Category-I and their equivalent ranks in the Armed Reserve and Tamil Nadu Special Police Branch in category-II and III. The 80% direct recruitment quota of Sub-Inspector of Police will be filled by from open market and 20% from serving 'Police personnel in all the three categories. It was also ordered that "the inter-se-seniority of the candidates selected against this recruitment would be above those selected in the open competition in the year.

2. In the Government Order second read above, among others, notification for making suitable amendment regarding reservation of 20% vacancies of the direct recruitment quota for the departmental candidates as ordered in the Government order first read above, to the relevant provision of the Special Rules for the Tamil Nadu Police Subordinate Services Rules, 1955 giving retrospective effect from 13.07.1995 was issued. But no amendment relating to fixing inter-se-seniority between direct recruits. Sub-Inspectors from open market and Departmental candidates was made in the said Order. However in the Government Order third read above, necessary amendment to the relevant rules for fixing the inter-se-seniority between the Departmental quota Sub-Inspector of

Police candidates and the direct Sub-Inspectors of Police from the open market was issued. But the said amendment was not notified in the Government Gazette inadvertently.

3. The Director General of Police, Chennai, has stated that based on the Government Order first read above, the seniority of the 20% departmental quota candidates of directly recruited Sub-Inspectors of Police for the year 1994-1995, 1997-1998 and 2001-2002 (WSIs batch) were fixed above the open quota candidates. He has therefore requested to re-issue amendment to Rule 25 (a) of the Special Rules for the Tamil Nadu Police Subordinate Services, 1955, fixing the seniority of the directly recruited Sub-Inspector of Police from the Departmental quota candidates above the open quota candidates with retrospective effect.

*4. After careful examination, the Government have decided to accept the proposal of the Director General of Police, Chennai and to give effect to the amendment retrospectively i.e., from 13.07.1995. Accordingly the following notification shall be published in the **Tamil Nadu Government Gazette:-***

NOTIFICATION

In exercise of the powers conferred by sections 8 and 10 of the Tamil Nadu District Police Act, 1859 (Central Act XXIV of 1859) and sections 9 and 11 of the Chennai City Police Act, 1888 (Tamil Nadu Act III of 1888) read with proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Special Rules for the Tamil Nadu Police Subordinate Service (Section 34 in Volume III of the Tamil Nadu Services Manual, 1986).

2. The amendment hereby made shall be deemed to have come into force on the 13th July 1995.

AMENDMENT

In the said Special Rules, in rule 25, in sub-rule (a), after the fifth proviso, the following proviso shall be inserted, namely:-

“Provided also that the seniority of the Sub-Inspectors of Police directly recruited under the departmental quota shall be fixed above the persons directly recruited under open quota in the same recruitment.”

The consequential amendment was also made in the recruitment rules meaning thereby that the G.O. dated 21.11.2017 was also notified in the official Gazette, making the amendment applicable with retrospective effect.

6. The facts of the case reveal that the constables working in the police department in the year 1995 were given 20% of the vacancies to compete under the direct recruitment quota and they were to be given seniority over and above the other 80% remaining constables recruited through open market.

7. A large number of writ petitions were preferred before the High Court of Madras challenging the fixation of seniority and it was brought to the notice of the High Court that by virtue of the amendment incorporated by G.O. dated 21.11.2017, persons who were less meritorious in the process of selection were placed over

and above meritorious candidates. The categoric examples were given in the writ petition and have also been given before this Court which reveal that out of 100 marks, the Appellant Ranjith Singh had secured 79.10 and he was the first rank holder; the Appellant Premanand had secured 78.60, Jawahar had secured 77.56 and Srinivasan had secured 77.21. The other Appellants have also secured very high percentage of marks and the 147 candidates selected from the department as against 20% quota have secured lower marks than the candidates who were selected from the open market. Example of one Santhakumari who is a departmental candidate finds mention who had secured 69.27 marks. Unfortunately, Santhakumari has been placed over and above persons who have obtained higher marks. The High Court of Madras has dismissed the Writ Petitions of direct recruitees and the operative paragraph of the order as contained in paras 31, 32 and 33 reads as under:

“31. As regards the seniority of the remaining 600 directly recruited candidates and the 267 in-service candidates, admittedly, the in-service candidates have to be given a preference especially when they have already earned hands-on experience in the department and had learnt the nuances in the police department. Such experience gained by them would certainly outweigh against the 600 candidates appointed along with them on 02.06.1997. In order to strike a balance among the 600 candidates appointed along with the 267 in-service candidates, we have to adopt a yardstick which would be just

and reasonable. If a method is adopted for reckoning the seniority among the directly recruited 600 candidates and the in-service candidates, preference will have to certainly be given to the in-service candidates. We wish to reiterate that the Government, while earmarking 20% of the vacancies for the direct recruitment quota of the Sub-Inspector of Police for existing Police Constables and Head Constables, imposed a condition that they must have completed five years of service and that they should not have been subjected to any disciplinary proceedings or punishment. Therefore, we can construe that only those candidates who have a clean track record have been allowed to participate in the selection process as in-service candidates and this is also one of the reasons why they should be given preference above the 600 directly recruited candidates. If such a preference is not given to the in-service candidates, at least for determining their seniority, it would frustrate them as they have taken the mantle much ahead of the 600 directly recruited candidates.

32. On behalf of the directly recruited candidates, much has been argued that the amendments brought in after 22 years giving preference to in-service candidates is unreasonable and it has no nexus sought to be achieved. It is also vehemently contended that the statutory rules cannot be overridden by executive order and therefore, the amendment brought in to Rule 25 (e) of the Special Rules for Tamil Nadu Police Subordinate Service is illegal and it will not give preference to the in-service candidates. We are unable to accept this contention advanced on behalf of the directly recruited candidates. The Government is always

empowered to bring in amendment to the Statutory Rules. It cannot be gainsaid that such amendments were brought in after a great length of delay. The power to bring in amendment to a statutory rule is always vested with the State legislature and it cannot be questioned on the ground of delay. Even otherwise, in the decision relied on by Mr. Singaravelan, learned Senior Counsel in the case of Sant Ram Sharma vs. State of Rajasthan and another reported in 1967 AIR 1910 it was held that government is empowered to issue administrative instructions and such instructions will have a binding force. It was also held that government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue administrative instructions not inconsistent with the rules already framed. Therefore, it is evident that while bringing in an amendment, the only requirement is that such amendment should not be inconsistent with any other law for the time being in force or in any manner repugnant to the existing rules. In the present case, the amendment brought to the Special Rules to the Tamil Nadu Police Subordinate Service Rules to the effect that preference can be given to seniority to the members in the Tamil Nadu Police Subordinate Service by placing them above the direct recruits selected from the open market in the same year. Such an amendment brought to Rule 25 (a) in our opinion is not repugnant or inconsistent with any other laws time being in force. Further, the Government, in their wisdom, have thought it fit to give preference to the in-service candidates who have already put in five years of experience prior to their recruitment to

the post of Sub-Inspector. Above all, the Government thought it fit that those in-service candidates are already aged when compared to the directly recruited candidates and therefore, if they are given preference in fixation of seniority, they could get the promotional prospects before their retirement, otherwise they could not. In such view of the matter, we are of the view that the amendments brought to Rule 24 (e) of the Special Rules for Tamil Nadu Special Police Subordinate Service is proper and we do not see any reason to interfere with the same.

33. In the light of the above, we dispose of these writ petitions/writ appeal with the following observation:-

(i) The directly recruited 500 candidates are ordered to be placed first in the seniority list as has been directed by the Division Bench of this Court in the Judgment dated 11.03.2015 passed in WA Nos. 1599 and 1600 of 2014 and WP No. 2570 of 2015, which was also affirmed by the Honourable Supreme Court in SLP Civil No. 15710 to 15712 of 2015 dated 09.02.2017.

(ii) The 267 in-service candidates are ordered to be placed next in the seniority list below the 500 directly recruited candidates mentioned in clause (i) above

(iii) The 600 directly recruited candidates are ordered to be placed below the 267 in-service candidates mentioned in clause (ii) above in the order of seniority

(iv) W.A. No. 484 of 2018 stands dismissed by confirming the order dated 27.06.2017 passed by the learned single Judge in WP No. 4355 of 2017

(v) The official respondents are directed to prepare the seniority list as directed above and

proceed further in accordance with law. Such an exercise is directed to be concluded within a period of three months from the date of receipt of a copy of this order.

(vi) There shall be no order as to costs. Consequently, all the connected miscellaneous petitions are closed.”

8. The High Court has assigned a reasoning for granting seniority to in-service candidates who have taken part in the examination meant for direct recruitment under the 20% quota by holding that in-service candidates have to be given preference, especially as they are experienced people in the Department and had learnt the nuances in the Police department.

9. Learned Senior Counsel appearing for the appellants has vehemently argued before this Court that under the 1955 Rules, there are already three modes of recruitment, which are (i) by transfer to the services; (ii) by promotion; and (iii) by direct recruitment. Learned Senior Counsel submitted that so far as direct recruitment is concerned, the seniority of all direct recruits has to be fixed based upon the marks obtained by them in the qualifying examination and preferential treatment cannot be given to candidates who are in-service candidates. He has further argued before this Court that once the recruitment is from the open market i.e. direct recruitment, merely because a person has worked in the Department earlier, such person cannot steal a march over direct recruits even though he is lower in merit.

Hence, the amendment brought vide G.O. dated 10.06.2009 and G.O. dated 21.11.2017 amending Rule 25(a) of the 1955 Rules are violative of Articles 14, 16 and 21 of the Constitution of India and deserves to be struck down by this Court.

10. Learned Senior Counsel has further argued before this Court that until the year 1995, the Head Constables serving the Department were promoted to the post of Sub-Inspectors under the promotion quota only and there was no such quota prescribed for them to participate in the direct recruitment process. However, as there was stagnation in the cadre of constables, the Government of Tamil Nadu took a policy decision to provide reservation to the persons from constabulary services to participate in the direct recruitment also to the extent of 20% of the vacancies. He has contended that the concession of granting participation in 20% of the vacancies reserved for direct recruitment is itself bad in law, however, the direct recruits under the 80% quota are not aggrieved by the same. The only grievance is that the seniority has to be maintained as per the marks obtained in the examination, through which persons have been selected to the post of Sub-Inspectors of Police.

11. Learned Senior Counsel has further contended that High Court has failed to consider the statutory rules governing the fixation of inter-se seniority and the same could not have been

given effect to, by an executive order or circular, as has been done by the State Government from time to time. Learned Senior Counsel has further argued before this Court that the amendment which was brought in force vide G.O. dated 21.11.2017 which subsequently amended the 1955 Rules could not have been given effect to from 1995 and by no stretch of imagination a person lower in merit can be placed over and above a person who secured more marks and who is higher in merit. Learned Senior Counsel has vehemently argued before this Court that the entire exercise on part of the State Government is nothing but appeasement of in-service candidates contrary to the settled principles of law, which provides for grant of seniority based upon the merit list prepared on the basis of process of recruitment conducted by the recruiting agency. In the present case, a large number of examinations were involved and all the examinations were conducted by Tamil Nadu Uniformed Services Recruitment Board and the merit list prepared on the basis of the examination is a sacrosanct list and the same has to be given effect to.

12. On the other hand, a detailed and exhaustive counter affidavit has been filed by the State Government and it has been stated that as per G.O.(Ms.) No. 1054 dated 13.07.1995, the government has earmarked 20% of the vacancies in the section for direct recruitment of Sub-Inspectors of Police by allowing in-service candidates who otherwise satisfy the other eligibility

criteria for selection and the said G.O. provides for grant of seniority to them over the remaining 80% Sub-Inspectors selected from the open market. It has been contended that in the absence of statutory rules, the Government is empowered to issue administrative instructions which have a binding force even in the absence of a notification in the official Gazette and the Government is entitled to bring an amendment at any point of time. It has been further contended that by virtue of Executive Instructions dated 13.07.1995, the process of recruitment was adhered to by appointing large number of candidates and the in-service candidates were appointed prior to the direct recruits appointed from the open market and, therefore, the in-service candidates have to be given seniority over the candidates appointed through the process of selection meant for persons from open market. Respondents have further stated that large number of Sub-Inspectors who are in-service candidates have received further promotions and at this juncture, if seniority list is recasted, it will result in great injustice as some of them will have to be reverted and the Appellants will have to be given promotion based upon fresh gradation list on the basis of their performance in the examination conducted for the post in question. Respondents have also given reference to the litigation which took place in the past and have prayed for dismissal of the appeal.

13. The departmental candidates have also filed a reply in the matter and their contention is that the plea raised by the appellants before this Court that executive instructions cannot over-ride the statutory rules, does not have legs to stand as amendment has been carried out in the recruitment rules also. It has been vehemently argued that the recruitment rules provide for placing the candidates selected through open market below the departmental candidates right from 1995 and as the recruitment rules were not amended, the Government after realizing its mistake have issued a notification dated 21.11.2017 and has rightly given retrospective effect i.e. with effect from 1995. The Respondents have further stated that the question of quashing the amendment under the 1955 Rules does not arise as it will result in unsettling the applecourt and will also lead to reversion of large number of in-service candidates. The Respondents have further contended that the State Government in its wisdom thought it fit to give preference to the in-service candidates who have already put in five years' service prior to the recruitment to the post of Sub-Inspector under the 20% quota out of 100% earmarked for direct recruitment and the same was done as in-service candidates were having experience, they are aged and in order to provide channel of promotion to them before their retirement. The Respondents have prayed for dismissal of the appeal. Learned counsel for the respondents have placed reliance

upon a judgment delivered in the case of *State of Himachal Pradesh and Others Vs. Raj Kumar and Others* 2022 SCC OnLine SC 680 and it has been argued that based upon aforesaid judgment, the question of granting seniority to the appellants does not arise.

14. We have learned Senior Counsel for all the parties at length appearing on respective sides and have carefully gone through the record and the case laws cited by all the learned counsel for the parties.

15. The dispute involved in the present case is fixation of *inter se* seniority in respect of direct recruitment which includes some in-service candidates also recruited under the direct recruitment quota. The 1955 Rules provide for recruitment to the post of Sub-Inspectors of Police by way of direct recruitment and by way of promotion. Rule 3 quoted earlier provides for two sources of recruitment. The State Government in exercise of powers conferred under proviso 2 to Article 309 of the Constitution of India has framed recruitment rules for appointment to the post of Sub-Inspectors of Police and as already stated earlier, the recruitment is made by direct recruitment and by promotion from the eligible candidates already serving the Department. The State Government, keeping in view of the representations from large number of constables and other allied categoric police personnels

who were not able to make a mark to the post of Sub-Inspectors of Police under the promotion quota, took a policy decision to provide some reservation to the serving Head Constables in the Police Department under the Direct Recruitment quota and a G.O. (Ms.) No. 1054 dated 13.07.1995 was issued reserving 20% of the vacancies under the direct recruitment to be filled up only from constabulary services. Thus, in short, under the direct recruitment quota, constables fulfilling the requisite criteria were permitted to apply and to compete with open market candidates. The G.O. dated 13.07.1995 was never published in the official Gazette nor the recruitment rules were amended; however, the recruitment did take place by granting 20% vacancies under the direct recruitment quota to the in-service candidates. The State Government thereafter issued another G.O. (Ms.) No. 1627 dated 24.10.1996 again providing 20% of the vacancies to in-service candidates under the direct recruitment quota; however, the G.O. dated 24.10.1996 was also not published in the official Gazette nor the recruitment rules were amended. The State Government, in spite of the fact that recruitment rules were not amended, again appointed large number of candidates under the 20% quota, to the post of Sub-Inspector of Police and after realizing its mistake that the rules have not been amended, issued another G.O. Ms. No. 4651 dated 10.06.2009 proposing to amend the Rules in order to grant seniority to in-service candidates recruited under

the direct recruitment quota. The G.O. dated 10.06.2009 was again not published in the official Gazette nor the rules were amended and seniority was given to the in-service candidates over and above the directly recruited candidates appointed through the open market.

16. The State Government finally realizing its mistake issued G.O. Ms. No. 868 dated 21.11.2017 which is the subject matter of the present appeals reserving 20% of the vacancies for serving police personnel and 80% vacancies for open market candidates for the post of Sub-Inspector of Police and also for providing seniority to the in-service candidates *en bloc* over and above the candidates appointed to the service by way of direct recruitment under 80% of the vacancies. The State Government for the first time published the G.O. dated 21.11.2017 in the official Gazette and also amended the recruitment rules. The State Government not only granted *en bloc* seniority to the 20% in-service candidates who were appointed under the direct recruitment quota over and above the open candidates appointed to service through open market but the rule was given effect to with retrospective effect i.e. with effect from 13.07.1995.

17. Various writ petitions were preferred before the High Court of Madras and the High Court of Madras by way of common order has upheld the G.O. dated 21.11.2017.

18. The facts of the case also reveal that the State Government has not applied the seniority rule uniformly right from the year 1995 inasmuch as in some of the batches, seniority has been given to in-service candidates appointed under the 20% quota and in some of the batches, seniority has also not been given. However, in the case of R.Ranjith Singh & Ors. Vs. State of Tamil Nadu & Ors., Writ Petition No. 25263 of 2009 which is the lead matter, the State Government has granted seniority to departmental candidates who were recruited under the 20% quota over and above the directly recruited candidates appointed from the open market and a common judgment has been passed by the High Court upholding the G.O. dated 21.11.2017 and the amendment under the recruitment rules meaning thereby in respect of 100% direct recruitments to the post of Sub-Inspector of Police, persons who are in-service candidates and who have been given liberty to compete under the direct requirement quota (20%) were placed over and above persons recruited through open market.

19. Learned Senior Counsel for the appellants has demonstrated before this Court that the Appellant R.Ranjith Singh has secured 79.10 marks and he was the first rank holder and one Santhakumari who was a departmental candidate has secured 69.27 marks; however, Santhakumari has been placed over and above the persons who have obtained higher marks and

in fact all the departmental candidates have obtained less marks than the open category candidates under the direct requirement quota and have been placed over and above the persons who have obtained more marks only because they are the in-service candidates. In the considered opinion of this Court, such an action on the part of the Respondent State is against the settled canons of law. In respect of fixation of seniority of direct recruitments, the unamended rule i.e Rule 25 was very clear which provided for fixation of seniority with reference to the rank assigned by the appointing authority in the list of selected candidates. It is unfortunate that the State Government has amended Rule 25 by G.O. dated 21.11.2017 by giving it retrospective effect i.e. with effect from 13.07.1995. The State Government has certainly issued various executive directions from time to time for appointment under the direct recruitment quota providing reservation to in-service candidates to the extent of 20%; however, the rules were never amended till 21.11.2017. It is a well settled proposition of law that executive instructions cannot supplant the statutory rules. They can supplement/clarify the statutory rules. In the present case, the executive instructions issued from time to time have in fact supplanted the statutory rules and such a process is unheard of in the field of service jurisprudence.

20. This Court in the case of ***State of Madhya Pradesh and Another Vs. M/s G.S. Dall and Flour Mills*** 1992 Supp (1) Supreme Court Cases 150 has held that executive instructions can supplement a Statute or cover areas which the Statute does not extend. They cannot run contrary to the statutory provisions or whittle down their effect. In the present case, the G.O. dated 13.07.1995, G.O. dated 24.10.1996 and G.O. dated 10.06.2009 are executive instructions and based upon the executive instructions, the statutory provisions as contained under the statutory rules could not have been made applicable as has been done in the present case.

21. This Court in the case of ***Jaiveer Singh and Others Vs. The State of Uttarakhand and Others*** 2023 INSC 1024 has held as under:

“34. It can thus be seen that it is a trite law that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, it can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. It is a settled proposition of law that an authority cannot issue orders/office memorandum/ executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it.

This Court has again held in the aforesaid case that the Government cannot issue executive instructions in contravention of the statutory rules.

22. The State Government without amending the recruitment rules right from 1995 continued with the appointing process under the direct recruitment category by appointing in-service candidates and in the considered opinion of this Court, such a recourse was not available to the State Government without amending the recruitment rules. However, in light of the fact that the persons have been promoted in 1995 and thereafter also, this Court is not touching their promotion orders. The State Government without amending recruitment rules till 2017 continued to appoint Sub-Inspector of Police from Head Constables serving the police department and all such recruitments were made without amending the recruitment rules. The recruitment rules were amended only in the year 2017. In the considered opinion of this Court, the amendment to the recruitment rules in the year 2017 to the extent it provides for 20% reservation under the direct recruitment category to the in-service candidates, does not warrant any interference. However, the amendment brought vide G.O. dated 21.11.2017 amending Rule 25(a) of the 1955 Rules, which provides for grant of seniority to all in-service candidates over and above candidates recruited from the open market is certainly violative of Articles

14, 16 and 21 of the Constitution of India and deserves to be struck down by this Court.

23. The State Government after realizing its mistake has gone to the extent of giving retrospective effect in the matter of seniority meaning thereby giving a preferential treatment to the in-service candidates who are less meritorious and who have already been granted a concession by permitting them to appear under the 20% quota earmarked for them. In the considered opinion of this Court, the action of the State Government in amending the recruitment rules with retrospective effect is certainly violative of Articles 14, 16 and 21 of the Constitution of India. A statute which takes away the right of an individual with retrospective effect deserves to be set aside by this Court.

24. The judgment relied upon by the respondent in the case of ***State of Himachal Pradesh and Others Vs. Raj Kumar and Others*** 2022 SCC OnLine SC 680 is distinguishable on facts and does not help the respondents in any manner.

25. This Court in the case of ***Dinesh Kumar Gupta and Others Vs. High Court of Judicature of Rajasthan and Others*** (2020) 19 Supreme Court Cases 604, was dealing with the seniority issue of District Judges promoted through Limited Competitive Examination. In the aforesaid case, it has been held that *inter se* placing of candidates selected through Limited Competitive

Examination has to be based upon merit. Paras 48, 49 and 50 of the aforesaid judgment read as under:

“48. While considering Question 40.4.(D), it is relevant to notice the emphasis placed by this Court in All India Judges Assn. (3) [All India Judges Assn. (3) v. Union of India, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] while directing that 25% of the posts in the cadre of the District Judge be filled through LCE. It was stated in para 27 that there should be an incentive amongst relatively junior and other officers to improve and to compete with each other so as to excel and get accelerated promotion. In para 28, the relevant direction again stressed that 25% quota for promotion through LCE be “strictly on the basis of merit”.

49. Rule 31(2) of the 2010 Rules also uses the expression “strictly on the basis of merit” while dealing with posts to be filled in through LCE. The merit is to be assessed in terms of the scheme laid down in the relevant Schedule. After considering various parameters stated in the said Schedule, the successful candidates are selected on the basis of merit. The list of successful candidates becomes the basis for final selection subject to qualifying parameters such as suitability, medical fitness, etc. However, placing reliance on Rule 47(4), the Committee in its Report dated 15-3-2019 held that the inter se seniority of persons promoted to the District Judge cadre in the same year ought to be the same as it was in the posts held by them at the time of promotion. If the list is to be drawn up according to merit, it is possible that the last person in the list of selectees may be the seniormost and going by the Report of the Committee, if all the selectees are promoted in the same year such last

person may as well be at the top of the list of promotees through LCE. In that event, the seniority shall become the governing criteria and the excellence on part of a comparatively junior candidate may recede in the background. Instead of giving incentive to comparatively junior and other officers, the entire examination process will stand reduced to a mere qualifying examination rather than a competitive examination affording opportunity to meritorious candidates. The criteria shall then become seniority subject to passing the LCE. The direction issued in All India Judges Assn. (3) [All India Judges Assn. (3) v. Union of India, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] to afford an incentive to meritorious candidates regardless of their seniority would not thus be carried out. The general principle appearing in Rule 47(4) must, therefore, give way to the special dispensation in Rule 31(2) of the 2010 Rules.

50. *In our view, the High Court in its Report dated 15-3-2019 completely failed to appreciate the true character of LCE and reservation of certain quota for that category. We, therefore, accept the submissions made by the learned advocate for the petitioners in Writ Petition (Civil) No. 498 of 2018 and Diary No. 13252 of 2019 and while answering Question 40.4.(D) declare that the inter se placement of the candidates selected through LCE must be based on merit and not on the basis of the seniority in the erstwhile cadre. The said writ petitions are allowed to that extent.”*

In the aforesaid case, there was a dispute in respect of *inter-se* seniority of persons who were appointed to the services under the Limited Departmental Examination. The High Court granted

seniority based upon their past services; however, this Court in the aforesaid cases also held that once an appointment to service is made based upon a competitive examination, the seniority has to be maintained on the basis of performance in the examination and not by taking into account the past service alone.

26. Again, this Court in the case of ***Prem Narayan Singh and Others Vs. High Court of Madhya Pradesh*** (2021) 7 Supreme Court Cases 649 while dealing with promotions based upon Limited Competitive Examination has held that the seniority has to be based upon the merit and not on the basis of seniority in the feeder cadre.

27. In the present case, the direct recruitment has been done to 80% of the vacancies through candidates from open market and 20% of the vacancies under the direct requirement quota from in-service candidates and pre-amended Rule 25 provides for fixation of seniority with reference to the rank assigned by the appointing authority in the select list meaning thereby only on the basis of marks obtained by each and every individual candidate. Therefore, this Court is of the considered opinion that all seniority list(s) right from 1995 deserve to be re-casted by assigning proper seniority to the candidates who have been appointed from the open market as well as from *in-service* candidates solely on the basis of ranks assigned to the selected

candidates by the appointing authority on the basis of marks obtained by them in the examination on the basis of which they have been selected and appointed to the post of Sub-Inspector of Police. There is no other process which can be followed in the present case.

28. Resultantly, the GO dated 21.11.2017 which grants seniority to the departmental candidates over and above the candidates who have been recruited from open market is hereby quashed and amendment to Rule 25 sub rule (a) also is hereby struck down being violative of Articles 14, 16 and 21 of the Constitution of India, meaning thereby, the Respondents shall issue a fresh gradation list solely on the basis of marks obtained by candidates in the examination on the basis of which they have been recruited to the services. The Appeals stand disposed of with the following directions:

- a) The respondents shall recast all gradation list issued from time to time in respect of direct recruitment which includes 20% in-service candidates recruited directly to the post of Sub-Inspector of Police by granting seniority on the basis of marks obtained in the qualifying examination/selection process. The exercise of recasting and issuance of revised gradation list be positively concluded within a period of 60 days from today.

- b) The respondent State shall not revert any officer who has been given further promotion on the basis of the seniority list already issued by the Department from 1995; however, the respondent State shall not issue any promotion order in respect of departmental candidates till the revised seniority list is issued as aforesaid.
- c) That, after issuance of revised seniority list, the State Government shall consider the cases of all departmental candidates for promotion to the next higher post keeping in view the promotions granted to the juniors (based upon the revised seniority list) and the exercise of granting promotions be concluded in respect of the direct recruits (80%) quota within a period of two months from the date of issuance of revised seniority list.
- d) The direct recruits, in case they are found fit for promotion to the next higher post will be entitled for notional promotion, fixation of seniority and all other consequential benefits except back wages on grant of promotion to the next higher post.
- e) The State Government shall hereinafter conduct one common examination for 100% direct recruitment for appointment to the post of Sub-Inspector of Police which includes 80% from open market and 20% from in-service candidates and their seniority shall be assigned based upon

the marks obtained by individual candidates/rank assigned by appointing authority in the list of selected candidates.

29. With the aforesaid, the appeals stand disposed of. No orders as to costs. Pending application(s), if any, shall also stand disposed of.

.....J.
[B. V. NAGARATHNA]

.....J.
[SATISH CHANDRA SHARMA]

NEW DELHI
May 01, 2025.