



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) Nos. 221 to 225 of 2018 and 954 to 959 of 2018
and

C.M.P. (MD) Nos. 1220, 1957, 1221, 1222, 1223, 1224, 1225, 1226,
1227, 1228, 6334, 6336, 6337, 6338, 6339, 6340, 6341, 6342, 6343,
6335 and 6344 of 2018

W.A. (MD) No. 221 of 2018:

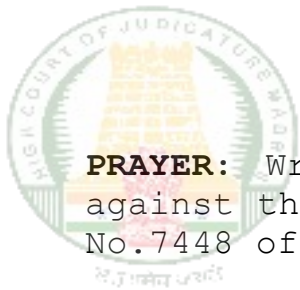
M. Rajinikanth

: Appellant

Vs.

1. S. Jegadeesan
2. J. Subburaj
3. P. Alagu Murugan
4. D. Muthupandian
5. P. Raja
6. A. Ramaraj
7. N. Eswari
8. A. Shanmuga Sundarapandi
9. P. Bala Guru
10. S. Chinnamayan
11. P. Nageswari
12. K. Rathina Gandhi
13. K. Siva Shankar
14. V. Malarkodi
15. S. Radha
16. C. Vetriseelan
17. M. Rasheethkhan
18. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Agriculture,
Fort St. George,
Chennai-600 009.
19. The Commissioner of Agriculture,
Ezhilagam, O/o. The Commissioner of Agriculture,
Chepauk, Chennai-600 005.
20. Mr. M. Ramesh

: Respondents



PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.7448 of 2017.

Prayer in WP(MD)No.7448 of 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Letter No. Ka.Ba.Ni.2/19797/2017, dated 13.03.2017 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the Respondents to re-fix the seniority in the cadre of Assistant Agriculture Officer, recruited through employment exchange in the year 2009, by adhering to the date of joining in service within the time stipulated by this Hon'ble Court.

For Appellant : Mr.T.Arul
For Respondent No.1 : Mr.T.Lajapathi Roy
For Respondents 18&19: Mr.K.Chellapandian,
Additional Advocate General,
Assisted by,
Mr.A.K.Baskarapandian,
Special Government Pleader

W.A. (MD)No.222 of 2018:

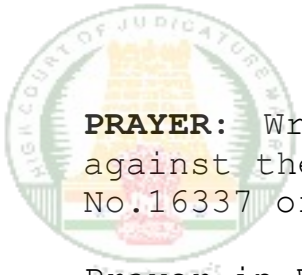
M.Rajinikanth : Appellant

Vs.

1. S.Kavaskar
2. The State of Tamil Nadu,
rep. by its Secretary to Government -cum-
Agriculture Production Commissioner,
Secretariat, Fort St. George,
Chennai-600 009.
3. The Commissioner of Agriculture,
Ezhilagam,
Chepauk, Chennai-600 005.
4. The Joint Director Agriculture,
Master Plan Complex, Collectorate,
Theni District.

5. R. Ramesh
6. R.Rayappanathan

: Respondents



PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.16337 of 2016.

Prayer in WP(MD)No.16337 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 22.07.2016 in Ka.Pa.Ni 2/78748/2016 issued by the 2nd respondent and quash the same as illegal and consequentially direct the respondents to prepare the seniority list based on the date of joining and age as per Rule 35(aa) of Tamilnadu State and Subordinate Service Rules within the time stipulated by this Hon'ble Court.

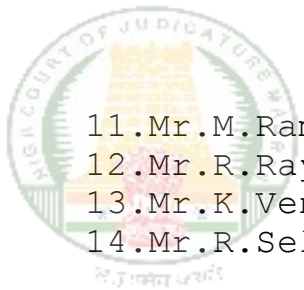
For Appellant : Mr.T.Arul
 For Respondents 2to4 : Mr.K.Chellapandian,
 Additional Advocate General,
 Assisted by,
 Mr.A.K.Baskarapandian,
 Special Government Pleader

W.A. (MD) No.223 of 2018:

M.Rajinikanth : Appellant

Vs.

1. V.Murugan
2. A.M.Mariappan
3. V.Kaniraja
4. S.Samsudeen
5. N.Ashokalingam
6. C.Vanaja
7. The State of Tamil Nadu,
 rep. by its Secretary to Government -cum-
 Agriculture Production Commissioner,
 Secretariat, Fort St. George, Chennai-600 009.
8. The Commissioner of Agriculture,
 Ezhilagam, Chepauk, Chennai-600 005.
9. The Joint Director of Agriculture,
 Nirubar Colony,
 Anna Nagar, Palayamkottai,
 Thirunelveli District.
10. The Joint Director of Agriculture,
 K. Sankaranarayanan, Nagercoil,
 Kanyakumari District.



11.Mr.M.Ramesh
12.Mr.R.Rayappanathan
13.Mr.K.Venkatesan
14.Mr.R.Selvaraj

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.16291 of 2016.

Prayer in WP(MD)No.16291 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in connection with the impugned order of rejection passed by him in his Proceedings in Letter No.Ka.Pa.Ni.1/78748/15 dated 22.07.2016 as well as the impugned seniority list drawn in the cadre of Assistant Agriculture Officer vide his proceedings in Ka.Pa.Ni.2/78748/2016 dated 22.07.2016 and quash the both as arbitrary and ultravires in so far as the Petitioners are concerned and consequently direct the respondents to prepare the seniority list based on date of joining and age as per Sec. 35(aa) of Tamil Nadu State and Subordinate Service Rules within the time that may be stipulated by this Hon'ble Court.

For Appellant : Mr.T.Arul

For Respondents 7to10: Mr.K.Chellapandian,
Additional Advocate General,
Assisted by,
Mr.A.K.Baskarapandian,
Special Government Pleader

W.A. (MD)No.224 of 2018:

M.Rajinikanth

: Appellant

Vs.

1. R.Kumaresan
2. P.Mariappan
3. A.Murugaiah
4. C.Senthilkumar
5. S.D.Cherman
6. S.Muthusamy
7. M.Maragathavalli
8. A.Sathishkumar
9. P.Pasunkodi
10.R.Praja
11.The State of Tamil Nadu,
rep. by its Secretary to Government -cum-
Agriculture Production Commissioner,
Secretary, Fort St. George,
Chennai-600 009.



12.The Commissioner of Agriculture,
Ezhilagam, Chepauk, Chennai-600 005.

13.The Joint Director of Agriculture,
Nirubar Colony,
Anna Nagar, Palayamkottai-627 002,
Tirunelveli District.

14.The Joint Director of Agriculture,
Krishnankoil, Nagercoil,
Kanyakumari District-629 001.

15.M.Ramesh

16.R.Rayappanathan

17.K.Venkatesan

18.R.Selvaraj

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.16292 of 2016.

Prayer in WP(MD)No.16292 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the impugned seniority list drawn in the cadre of Assistant Agriculture Officer vide his proceedings in Ka.Pa.Ni. 2/78748/2016 dated 22.07.2016 and quash the same as arbitrary and ultravires in so far as the petitioners are concerned and consequently direct the respondents to prepare the seniority list based on date of joining and age as per Sec. 35 (aa) of Tamil Nadu State and Subordinate Service Rules within time limit that may be stipulated by this Hon'ble Court.

For Appellant : Mr.T.Arul

For Respondents 11to14: Mr.K.Chellapandian,
Additional Advocate General,
Assisted by,
Mr.A.K.Baskarapandian,
Special Government Pleader

W.A. (MD)No.225 of 2018:

M.Rajinikanth

: Appellant

Vs.

1. M.Shanmugam

2. The State of Tamil Nadu,

rep. by its Secretary to Government -cum-

Agriculture Production Commissioner,

Secretariat, Fort St. George, Chennai-600 009.



3. The Commissioner of Agriculture,
Ezhilagam,
Chepauk, Chennai-600 005.

4. The Joint Director of Agriculture,
Master Plan Complex, Collectorate,
Theni District.

5. M.Ramesh

6. A.Rayappanathan

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.16336 of 2016.

Prayer in WP(MD)No.16336 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of rejection passed by the 2nd respondent in his proceedings in Letter No. Ka.Pa.Ni 1/78748/2015 dated 22.07.2016 as well as the impugned seniority list in Ka.Pa.Ni 2/78748/2016 issued by the 2nd respondent and quash the same as illegal and consequentially direct the respondents to prepare the seniority list based on the date of joining and age as per rule 35(aa) of Tamilnadu State and Subordinate Service Rules within time limit fixed by this Hon'ble Court.

For Appellant : Mr.T.Arul

For Respondents 2to4 : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by,
Mr.A.K.Baskarapandian,
Special Government Pleader

W.A. (MD) No.954 of 2018:

1. The State of Tamil Nadu,
rep. by its Secretary,
Department of Agriculture,
Fort St. George,
Chennai-600 009.

2. The Commissioner of Agriculture,
O/o.Commissionerate of Agriculture,
Chepauk, Chennai-600 005.

: Appellants



1. S.Jegadeesan
2. J.Subburaj
3. P.Alagu Murugan
4. D.Muthupandian
5. P.Raja
6. A.Ramaraj
7. N.Eswari
8. A.Shanmuga Sundarapandi
9. P.Bala Guru
- 10.S.Chinnamayan
- 11.P.Nageshwari
- 12.K.Rathina Gandhi
- 13.K.Siva Shankar
- 14.V.Malarkodi
- 15.S.Radha
- 16.C.Vetriselvam
- 17.M.Rasheethkhan
- 18.Mr.M.Ramesh
- 19.Mr.M.Rajini Kanth

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.7448 of 2017.

Prayer in WP(MD)No.7448 of 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Letter No. Ka.Ba.Ni.2/19797/2017, dated 13.03.2017 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the Respondents to re-fix the seniority in the cadre of Assistant Agriculture Officer, recruited through employment exchange in the year 2009, by adhering to the date of joining in service within the time stipulated by this Hon'ble Court.

For Appellants : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by,
Mr.A.K.Baskarapandian,
Special Government Pleader

For Respondent No.1 : Mr.T.Lajapathi Roy
For Respondent No.19 : Mr.T.Arul

W.A. (MD)No.955 of 2018:

1. The State of Tamil Nadu,
rep. by its Secretary to Government -cum-
Secretary to Government, Production Commissioner,
Secretariat, Fort St. George, Chennai-600 009.



2. The Commissioner of Agriculture,
Ezhilagam, Chepauk, Chennai-600 005.

3. The Joint Director Agriculture,
Nirubar Colony,
Anna Nagar, Palayamkottai-627 002,
Tirunelveli District.

4. The Joint Director of Agriculture,
Krishnankoil, Nagercoil,
Kanyakumari District-629 001.

: Appellants

Vs.

1. R.Kumaresan
2. P.Mariappan
3. A.Murugaiah
4. C.Senthilkumar
5. S.D.Cherman
6. S.Muthusamy
7. M.Maragathavalli
8. A.Sathishkumar
9. P.Pasunkodi
10.R.Praja
11.M.Ramesh
12.M.Rajini Kanth
13.R.Rayappanathan
14.K.Venkatesan
15.R.Selvaraj

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.16292 of 2016.

Prayer in WP(MD)No.16292 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the impugned seniority list drawn in the cadre of Assistant Agriculture Officer vide his proceedings in Ka.Pa.Ni. 2/78748/2016 dated 22.07.2016 and quash the same as arbitrary and ultravires in so far as the petitioners are concerned and consequently direct the respondents to prepare the seniority list based on date of joining and age as per Sec. 35 (aa) of Tamil Nadu State and Subordinate Service Rules within time limit that may be stipulated by this Hon'ble Court.

For Appellants

: Mr.K.Chellapandian,
Additional Advocate General,
Assisted by, Mr.A.K.Baskarapandian,
Special Government Pleader



For Respondents 1 to 11 : Mr.T.Lajapathi Roy
For Respondent No.12 : Mr.T.Arul

W.A. (MD) No. 956 of 2018:

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1. The State of Tamil Nadu,
rep. by its Secretary to Government -cum-
Agriculture Production Commissioner,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Commissioner of Agriculture,
Ezhilagam,
Chepauk, Chennai-600 005.
3. The Joint Director Agriculture,
Master Plan Complex, Collectorate,
Theni District.

: Appellants

Vs.

- 1.M.Shanmugam
- 2.M.Ramesh
- 3.M.Rajini Kanth
- 4.A.Rayappanathan

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P. (MD) No.16336 of 2016.

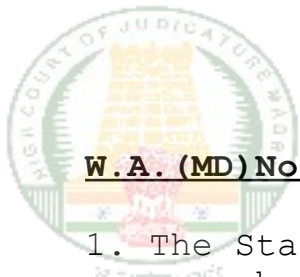
Prayer in WP(MD)No.16336 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of rejection passed by the 2nd respondent in his proceedings in Letter No. Ka.Pa.Ni 1/78748/2015 dated 22.07.2016 as well as the impugned seniority list in Ka.Pa.Ni 2/78748/2016 issued by the 2nd respondent and quash the same as illegal and consequentially direct the respondents to prepare the seniority list based on the date of joining and age as per rule 35(aa) of Tamilnadu State and Subordinate Service Rules within time limit fixed by this Hon'ble Court.

For Appellants : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by, Mr.A.K.Baskarapandian,
Special Government Pleader

For Respondent No.1 : Mr.T.Lajapathi Roy

For Respondent No.3 : Mr.T.Arul

**W.A. (MD) No. 957 of 2018:**

1. The State of Tamil Nadu,
rep. by its Secretary to Government -cum-
Agriculture Production Commissioner,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Commissioner of Agriculture,
Ezhilagam, Chepauk, Chennai-600 005.
3. The Joint Director Agriculture,
Master Plan Complex, Collectorate,
Theni District.

: Appellants

Vs.

- 1.S.Kavaskar
- 2.M.Ramesh
- 3.M.Rajini Kanth
- 4.A.Rayappanathan

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.16337 of 2016.

Prayer in WP(MD)No.16337 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 22.07.2016 in Ka.Pa.Ni 2/78748/2016 issued by the 2nd respondent and quash the same as illegal and consequentially direct the respondents to prepare the seniority list based on the date of joining and age as per Rule 35(aa) of Tamilnadu State and Subordinate Service Rules within the time stipulated by this Hon'ble Court.

For Appellants : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by,
Mr.A.K.Baskarapandian,
Special Government Pleader

For Respondent No.3 : Mr.T.Arul

W.A. (MD) No. 958 of 2018:

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Agriculture,
Fort St. George, Chennai-600 009.



2. The Commissioner of Agriculture,
O/o.Commissionerate of Agriculture,
Chepauk, Chennai-600 005.

: Appellants

Vs.

1. J.Subburaj
2. P.Alagu Murugan
3. D.Muthupandian
4. P.Raja
5. A.Ramaraj
6. N.Eswari
7. A.Shanmuga Sundarapandi
8. S.Jegadeesan
9. P.Bala Guru
10.S.Chinnamayan
11.P.Nageshwari
12.K.Rathina Gandhi
13.K.Siva Shankar
14.V.Malarkodi
15.S.Radha
16.C.Vetriselvam

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.19041 of 2016.

Prayer in WP(MD)No.19041 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Letter No.Ka.Ba.Ni2/78748/15, dated 22.07.2016 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the Respondents to refix the seniority in the cadre of Assistant Agriculture Officer, recruited through employment exchange in the year 2009, by adhering to the date of joining in service within the time stipulated by this Hon'ble Court.

For Appellants

: Mr.K.Chellapandian,
Additional Advocate General,
Assisted by,
Mr.A.K.Baskarapandian,
Special Government Pleader

W.A. (MD)No.959 of 2018:

1. The State of Tamil Nadu,
rep. by its Secretary to Government -cum-
Agriculture Production Commissioner,
Secretariat, Fort St. George, Chennai-600 009.



2. The Commissioner of Agriculture,
O/o. Commissionerate of Agriculture,
Chepauk, Chennai-600 005.

3. The Joint Director of Agriculture,
Nirubar Colony,
Anna Nagar, Palayamkottai-627 002,
Tirunelveli District.

4. The Joint Director of Agriculture,
Krishnankoil, Nagercoil,
Kanyakumari District-629 001.

: Appellants

Vs.

1. V.Murugan
2. A.M.Mariappan
3. V.Kaniraja
4. S.Samsudeen
5. N.Ashokalingam
6. C.Vanaja
7. M.Ramesh
8. Rajini Kanth
9. A.Rayappanathan
10.K.Venkatesan
11.R.Selvaraj

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 06.12.2017, made in W.P.(MD) No.16291 of 2016.

Prayer in WP(MD)No.16291 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in connection with the impugned order of rejection passed by him in his Proceedings in Letter No.Ka.Pa.Ni.1/78748/15 dated 22.07.2016 as well as the impugned seniority list drawn in the cadre of Assistant Agriculture Officer vide his proceedings in Ka.Pa.Ni.2/78748/2016 dated 22.07.2016 and quash the both as arbitrary and ultravires in so far as the Petitioners are concerned and consequently direct the respondents to prepare the seniority list based on date of joining and age as per Sec. 35(aa) of Tamil Nadu State and Subordinate Service Rules within the time that may be stipulated by this Hon'ble Court.

For Appellants

: Mr.K.Chellapandian,
Additional Advocate General,
Assisted by, Mr.A.K.Baskarapandian,
Special Government Pleader



For Respondent No.6 : Mr.T.Lajapathi Roy
For Respondent No.8 : Mr.T.Arul

COMMON JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

Considering the commonality of issues involved, all the Writ Appeals have been taken up together and disposed of by a common judgment.

2. The issue involved in these Writ Appeals is with respect to the *inter se* seniority to the post of Assistant Seed Officer, for which, the feeder category is Assistant Agricultural Officer. There was an earlier round of litigation at the time of appointment to the cadre of Assistant Agricultural Officers.

3. 4004 candidates were called for filing up of 1707 posts. 3506 candidates attended the interview. 50 Marks have been fixed for selection. Of the 50 marks, 10 marks were awarded for academic qualification, 15 for seniority in the Employment Exchange and another 25 for the performance in the interview. Accordingly, selections have been made. These selections were put into challenge. The matter went upto the Apex Court and the selections were upheld.

4. One of the contentions raised before this Court was with respect to the persons selected not posted though secured higher marks. It was accordingly clarified by the Government that they could not be posted though selected, in view of the interim order granted by this Court. Thereafter, all the selected candidates were accommodated. Because of the aforesaid situation, some of them joint later as against the others.

5. In the year 2016, the seniority list in the cadre of Assistant Agricultural Officers was drawn. In the Writ Petitions, the petitioners contended that they having joined their services earlier, the seniority will have to be reckoned for the purpose of promotion to the post of Assistant Seed Officers. Therefore, the question for consideration was with respect to the application of Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules or Rule 35(aa), as the case may be.

6. The learned Single Judge was pleased to allow the Writ Petitions holding that what is applicable is Rule 35(aa) and not Rule 35(a). Further findings have been given to the effect that certain persons have joined in the year 2010 and, therefore, they cannot be given seniority to those who joined in the year 2009 and no document has been produced by the Government to support their case and the selection of Assistant Agricultural Officers was made on the basis of seniority. In the absence of any document in support of the allotment of marks. Assailing the aforesaid order passed, the present Writ Appeals have been filed.



7. The learned Additional Advocate General appearing for the appellants in W.A.(MD)Nos.954 to 959 of 2018 and the learned counsel appearing for the appellant in W.A.(MD)Nos.221 to 225 of 2018 would submit that what is applicable is Rule 35(a). Rule 35 (a) clearly says that the *inter se* seniority will have to be fixed based upon the performance by which ranks have been drawn. Even before the learned Single Judge, counter-affidavit has been filed stating that the list was drawn based upon the marks awarded. It is for the writ petitioners to prove before this Court and, therefore, the learned Single Judge ought not to have drawn adverse inference against the appellants. The fact that some of the selected candidates could not join due to the interim order granted by this Court was taken note of by the learned Single Judge. The learned Single Judge also has committed an error in taking into consideration of regularisation made from the date of joining and mixed it with *inter se* seniority. Thus, the order passed requires interference.

8. The learned counsel appearing for the contesting respondents would submit that one has to see the entire facts governing the case. Only in the year 2011, marks have been published. There is no basis for awarding the marks. Admittedly, the private respondents have joined earlier. There are certain irregularities in the list published. The women candidates have been shown long after the list of the men. What is applicable is Rule 35(aa). In the interview, 50 marks have been awarded, which is contrary to law. Therefore, there is no interference required.

9. Admittedly, selection has been made based upon the marks obtained. That is the reason why, of the 3506 candidates, only 1707 were selected. This selection process has been approved by this Court and confirmed by the Apex Court. The issue of non-appointing some of the candidates those who got higher marks, was raised on the earlier occasion. It was rightly pleaded by the Government that such candidates, who secured higher marks, could not be given appointment though selected, because of the interim order. These persons joined later. Therefore, the question of awarding higher marks in the interview cannot be a ground to be raised in these proceedings, for the reason, this has already been dealt with and concluded in the earlier proceedings. Even otherwise, the same cannot be permitted to raise at this stage. Suffice it to say that all the selected candidates have undergone the very same process. Law is well settled that a candidate cannot be permitted to challenge a process after accepting it and undergone. Therefore, the common law principles of estoppel and acquiescence would certainly apply. Suffice it to note that even the writ petitioners/private respondents were appointed by same mode and those have accepted the rank list.

10. Rule 35(a) is very specific. It clearly mandates that seniority will have to be reckoned between the selected candidates based upon their merit. When once there is no doubt about the list



having been drawn based upon the merit, the seniority list drawn based upon it cannot be questioned. After all, it is for the writ petitioners to substantiate it otherwise. In the counter-affidavit filed by the official respondents, the aforesaid position has been stated categorically. Even before us, the mark list has been produced. Secondly, Rule 35(aa) stands on a different footing. One has to read Rule 35(aa) along with the proviso. This can be applied in a case where a person is appointed earlier and working and thereafter, some other person is appointed. Therefore, such situation cannot be applied to a common list, which has been drawn based upon merit.

11. To be noted, we are dealing with a case where mode of recruitment is direct and, therefore, even on that score, what is applicable is only Rule 35(a), since Rule 35(aa) deals with different modes of recruitment.

12. In such view of the matter, we are of the view that Rule 35(aa) does not have any application. The proviso makes it clear that even in a case where a junior is appointed to a promoted post thereafter followed by a senior, the *inter se* seniority in the promoted post will have to be fixed with the senior in the erstwhile cadre as a senior to the junior who is promoted earlier.

13. The learned Single Judge, in our considered view, has wrongly taken into consideration the date of regularisation as the one which gives rise to be considered as a senior between the persons appointed on the same day based upon merit. A regularisation *per se* is different. It merely gives a status to an employee. Therefore, this regularisation cannot be confused with the *inter se* seniority. To put it differently, regularisation given in favour of an employee cannot affect the right of another one who is otherwise senior based upon merit, though taken charge subsequently.

14. As rightly held by the Apex Court in **Chairman, Puri Gramya Bank v. Ananda Chandra Das [1994(6) SCC 301]** and **Suresh Chandra Jha v. State of Bihar [2007(1) SCC 405]**, fixing seniority and giving promotion based upon the date of joining in the feeder cadre is a fortuitous one and especially, when rules provide otherwise. Thus, looking from any angle, we are unable to sustain the order of the learned Single Judge. Accordingly, the same stands set aside and the Writ Appeals stand allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)



To

1. The Secretary to Government -cum-
The State of Tamil Nadu,
Agriculture Production Commissioner,
Secretariat, Fort St. George,
Chennai-600 009.
 2. The Commissioner of Agriculture,
Ezhilagam,
Chepauk, Chennai-600 005.
 3. The Joint Director Agriculture,
Master Plan Complex, Collectorate,
Theni District.
 4. The Joint Director of Agriculture,
Nirubar Colony,
Anna Nagar, Palayamkottai,
Thirunelveli District.
 5. The Joint Director of Agriculture,
Krishnankoil, Nagercoil,
Kanyakumari District.
- + 2 CC TO Mr.T.ARUL, ADVOCATE IN SR No. 82685
+ 7 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 82234 & 82235
(6+1)

SML

TE/RP/SAR-4 : 08/11/2018 : 14P/15C

W.A. (MD) Nos.221 to 225 of 2018
and 954 to 959 of 2018
Dated: 04.09.2018