



PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent against the order dated 18.11.2019 made in W.P.No.24385 of 2019.

For Appellants : Mr.R.Neelakandan AAG assisted
by Mr.M.Bindran AGP in all W.As

For Respondent : Mr.V.R.Rajasekaran for all W.As

COMMON JUDGMENT

(Judgement of the Court was made by Mr.K.KUMARESH BABU.,J.)

These Intra-Court Appeals arise out of a common order passed by the learned Single Judge, wherein, the learned Single Judge considering the fact that the similarly placed persons have been granted similar benefits, had quashed the orders impugned before him and directed the appellants to extend the benefits by implementing the earlier decision of the Division Bench and the learned single Judge in respect of the respondents herein.

2. Heard Mr.R.Neelakandan, learned Additional Advocate General assisted by Mr.M.Bindran, learned Additional Government Pleader appearing for the appellants and Mr.V.R.Rajasekaran, learned counsel for



the respondent.

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3. Mr.R.Neelakandan, learned Additional Advocate General, would submit that the respondents in all the Writ Appeals were all appointed as Agricultural Assistants, who were all absorbed as Village Level Workers in the Agricultural Department as Grama Sevaks. He would submit that their services are governed by a Special Rules namely Grama Sevak Rules. After their absorption as Grama Sevaks, the respective respondents had sought for transfer on their own volition to the districts of their choice and based upon the said requests, transfers were also made. On transfer, the respondents were all placed in the respective positions as per the said Special Rules. He would submit that the Rules 11(b) envisages that if a transfer was by a mutual consent or at a request of a person, then the person will take his rank last in the list of probationer/ approved probationer/ full members as their case may be in that category. In such view of the matter, all the respondents were placed in the last position of the seniority list in the District as per their category. However, certain of the similarly placed persons had approached in an earlier proceedings by applying Rule 35B of the Tamil



Nadu State Sub ordinate Service Rules were directed to be placed on seniority contrary to the said Rules. He would submit that the said Rule was not placed before the Court while the earlier orders were passed and therefore, he would submit that the decision of this Court relied upon by the learned Single Judge in coming to a conclusion that the said judgment would be applicable to the respondent herein also for granting the relief was wholly erroneous. Therefore, he would seek interference of the orders passed by the learned Single Judge.

4. Countering his arguments, Mr. V.R. Rajasekaran, learned counsel for the respondents would submit that it is not the fault of the respondents that the said Rule was not placed before the Division Bench of this Court. A reading of the judgment of the Division Bench would indicate that the said Rules were placed before the Division Bench. Only after considering the same, the Division Bench was pleased to hold that only Rule 35B of the Tamil Nadu Sub-ordinate Service Rules would be applicable to the case of the Grama Sevaks and therefore, this Court had directed the seniority to be re-fixed. Therefore, he would submit that the contention of the learned



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Additional Advocate General that the Rules were not looked into by the earlier Division Bench would have to fall . He would further submit that the respondents are all similarly placed persons as that of the Grama Sevaks whose seniority were directed to be refixed in the earlier decision of this Court and therefore, he would submit that no interference is required to be made in the order passed by the learned Single Judge.

5. We have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

6. We had gone through the initial order of the Division Bench of this Court in a batch of Writ Petitions in W.P.No.19960 of 1994 and etc., batch dated 19.04.2005. It is true that the Writ Petitions came to be filed by similarly placed Grama Sevaks. A thorough reading of the aforesaid judgment would indicate that the Rules relating to the Grama Sevak namely the Grama Sevaks Service Rules, 1964 was placed before the Division Bench of this Court. The Division Bench had in fact extracted Rule 11 of



the said Rules, wherein, the Rule envisaged that the seniority of the Grama Sevaks shall be fixed with reference to the aggregate marks obtained by them, which had in the tests held during the period of training that is referred to in Rule 9 and in the final examination on the completion of the training.

7. It is to be noted that the Division Bench was not apprised the subsequent amendment made in the year 1971, wherein, 1964 Rules were superseded and a new set of Rules were made. Rule 11 dealt with seniority which was the same as available in Rule 11 of the 1964 Rules. But, however, Rule 12 dealt with postings and transfers. Rule 12(b) of the Rules in clear terms would indicate that when a transfer is by a mutual consent or at a request, the person will take his rank last in list of probationer/ approved probationer/ full members as their case may be in that category. The said Rules again underwent an amendment in the year 1976, wherein, the 1971 Rules were superseded and the said Rules was deemed to have come into force on 02.07.1971, that is on the date of which the 1971 amendment were notified. Under the said Rules it could be seen that the Rule 11 regarding the fixation of seniority had been omitted and the Rule 12



of the 1971 Rules became Rule 11. Under Rule 11(b), the similar provision of fixation of the seniority of a person who had by transfer through mutual consent or his request had been retrietaed. For better appreciation, Rule 11(b) is extracted hereunder:-

“11. Postings and Transfers: (a).....

(b) In case of transfer by mutual consent or at request the person will take his rank last in the list of probationers or approved probationers or full members as the case may be in that category.”

8. It is unfortunate that this amended Rule had not been placed before the Division Bench of this Court in an earlier batch of Writ Petitions. Since, the Division Bench felt that there was no provision for fixation of a seniority of a transferred person either on administrative grounds or on request, had applied only Rule 35B of the Tamil Nadu State Sub ordinate Service Rules. Had this amended Rules been placed before the Division Bench, we are sure the Division Bench would not have taken such a view. This conclusion we arrive at is on the basis of a well settled principle that when a Special Rule is available for a particular cadre of service, then the



General Rules cannot be made applicable to that cadre of services.

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9. In view of the aforesaid findings and reasonings, we are of the view that the judgment of the Co-ordinate Bench had not laid down the correct proposition of law for us in to fall in line with the same. Since the learned Single Judge had relied upon the said judgment in coming to a conclusion that the respondents who are similarly placed persons who were the beneficiaries of the Division Bench judgment could also be extended with the same benefit. The learned Single Judge had also not looked into the said Rule eventhough it had been brought to the notice of him. Therefore, the orders impugned before us would have to necessarily be interfered with.

10. In fine, these Writ Appeals are allowed and the orders passed by the learned Single Judge, impugned in these Writ Appeals are set aside and consequently, the Writ Petitions filed by the respective respondents are dismissed. However, no order as to costs. Consequently, connected miscellaneous petitions are closed.



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(R.S.K.,J.)

(K.B., J.)

14.03.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

Gba

Writ Appeal Nos.686 to 692 of 2020
and C.M.P.Nos.9461 to 9463 of 2020
and 9465, 9467 to 9473, 9475 and 9476 of 2020

14.03.2024